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1 P R O C E E D I N G S

2 (Jury out.)

3 THE COURT: All right. Counsel, with regard to  
4 the joint motion to modify Defendant's Motion in Limine  
5 No. 17, which was filed overnight in the IV II versus Great  
6 West matter, which, as we all know, is  
7 Case No. 6:18-CV-299, this joint motion being  
8 Document 287, I've discussed in chambers and off the record  
9 with both of the parties the proposed modification, which  
10 is jointly presented to the Court, and the Court finds no  
11 reason not to accept the joint modification.

12 Accordingly, I will order Defendant's MIL No. 17  
13 modified for the limited purposes of, one, allowing the  
14 parties to use deposition testimony to impeach witnesses;  
15 and, two, allowing Plaintiff, IV II, to examine its expert  
16 witnesses regarding opinions based on materials produced  
17 and served by BITCO and allowing Great West to  
18 cross-examine Plaintiff's expert witnesses as to such  
19 opinions.

20 Also, by agreement of the parties, the Court has  
21 indicated that it is receptive to adding a short  
22 instruction related to this in its preliminary instructions  
23 to the jury such that when the Court instructs the jury on  
24 the existence and use of deposition testimony in the case,  
25 the Court will add the following instruction: You may see

1 some references to a company called BITCO in some  
2 deposition testimony or hear BITCO materials being  
3 discussed during the examination of expert witnesses over  
4 the course of this trial. BITCO and Great West are  
5 separate companies who are owned by the same parent  
6 company. However, BITCO is not a party to this lawsuit.

7 That's the modified instruction the Court has  
8 discussed with the parties, and it's my understanding that  
9 both Plaintiff and Defendant agree to that instruction to  
10 be given by the Court at an appropriate juncture in its  
11 preliminary instructions, as modified.

12 Is that agreeable to Plaintiff, Mr. Gilliland?

13 MR. GILLILAND: Yes, Your Honor.

14 THE COURT: To Defendant, Mr. Bettinger?

15 MR. BETTINGER: Yes, it is, Your Honor.

16 THE COURT: Okay. All right. Counsel, that will  
17 complete the matter related to this joint motion to modify  
18 Defendant's Motion in Limine 17.

19 We're off the record.

20 (Recess.)

21 (Jury panel in.)

22 COURT SECURITY OFFICER: All rise.

23 THE COURT: Thank you. Be seated, please.

24 Good morning, ladies and gentlemen. Thank you for  
25 being here. My name is Rodney Gilstrap, and I am the Chief

1 United States District Judge for the U.S. District Court  
2 for the Eastern District of Texas.

3 My permanent duty station is in Marshall, but  
4 I occasionally sit in other parts of the district when that  
5 comes necessary, and this case has been assigned to me, so  
6 I will be trying the case in Tyler, even though, when  
7 I'm not in Tyler, I'm usually in Marshall.

8 Let me tell you a little bit about myself. I've  
9 lived here in East Texas since 1981 when I got out of law  
10 school. I practiced law in and around Marshall and the  
11 broader East Texas area for 30 years before I became a  
12 U.S. District Judge. I've been on the bench here with this  
13 court since 2011.

14 And I'll make a confession. Early on, I was not  
15 born in Texas. But as they say, I got here as fast as  
16 I could. I came to Texas at the ripe old age of 18 to  
17 attend college and then stayed to go to law school at  
18 Baylor University in Waco.

19 I am married, I have two grown children, and my  
20 wife owns and operates a retailer floral business.

21 Now, I tell you all these things because in a few  
22 minutes, I'm going to ask each of you to give me the same  
23 kind of information about each of yourselves. And I think  
24 you're entitled to know as much about me as I'm about to  
25 find out regarding each of you.

1           We are about to engage in the selection of a jury  
2 in a civil case involving allegations of patent  
3 infringement. However, before we go any further, I'd like  
4 to briefly review with you how we came to have our civil  
5 jury trial system.

6           If you go back in ancient history and if you look  
7 at the first five books of the Old Testament, the  
8 Pentateuch, you'll find that the ancient Jewish Nation  
9 empaneled juries to determine issues of property ownership  
10 and property value.

11           The ancient Romans -- excuse me -- the Greeks  
12 began using the jury system about 1500 BC. And the Romans,  
13 like many other things, borrowed the jury system from the  
14 Greeks, and it was the Romans that brought the jury system  
15 to what is today England when they conquered that island in  
16 the  
17 4th Century AD.

18           Now, after they brought the jury system to  
19 England, it flourished there for 800 years until, in the  
20 12th Century, a tyrannical king came to the throne of  
21 Great Britain named King John, and King John developed many  
22 disputes with his nobles that nearly led to a civil war.  
23 And one of the issues that put the king in conflict with  
24 his nobles was King John attempted to limit and do away  
25 with the right to trial by jury.

1           Those disputes did not become a civil war in  
2 England, and they were avoided by an agreement that was  
3 reached between King John and his nobles at a location  
4 called Runnymede.

5           And the document that the king signed that  
6 restored the right to trial by jury in England and resolved  
7 their disputes is a document I suspect many of you have  
8 heard of. It's called the Magna Carta.

9           In fact, ladies and gentlemen, 28 of our 50  
10 United States have adopted in their own state constitutions  
11 the exact language verbatim from the Magna Carta that  
12 restores and guarantees the right to trial by jury.

13           So you can see, ladies and gentlemen, that the  
14 right to trial by jury was deeply engrained in our  
15 Founding Fathers as colonist subjects in colonial Britain  
16 here in America.

17           And the right to trial by jury flourished in  
18 Colonial America for over a hundred years until another  
19 tyrannical king came to the throne of Great Britain. This  
20 time his name was King George, III. And like King John,  
21 King George, III attempted to limit and do away to the  
22 right to trial by jury among his British subjects here in  
23 America.

24           In fact, when Thomas Jefferson sat down to write  
25 the Declaration of Independence which spells out the

1 numerous specific reasons why we were compelled to separate  
2 from Great Britain and form our own independent nation, one  
3 of the specific reasons set out in the declaration for our  
4 need to become independent was the effort by the king to  
5 limit and do away to the right to trial by jury.

6           Later, when we did gain our independence, we  
7 adopted our governing documents, including the  
8 Constitution. And the Constitution was ratified with the  
9 express understanding among the 13 original states that it  
10 would immediately be amended to add something that you all  
11 know about called the Bill of Rights.

12           And embedded within the Bill of Rights, those  
13 first 10 amendments to our U.S. Constitution is the Seventh  
14 Amendment. And the Seventh Amendment to our  
15 U.S. Constitution guarantees the right to a trial by jury  
16 in a civil dispute to every American citizen.

17           The Bill of Rights, including the Seventh  
18 Amendment, were ratified in 1791. So for well over 200  
19 years, every American has had a constitutionally guaranteed  
20 right to have a jury resolve its disputes where they are of  
21 a civil nature.

22           I always tell citizens who appear for jury duty,  
23 as you have this morning, that in my personal view, jury  
24 service is the second highest form of public service that  
25 any American citizen can render. In my personal opinion,



1 the highest -- the highest form of public service that any  
2 American can -- can render are those young men and women  
3 that wear the uniform of our armed forces.

4           So by being here this morning, ladies and  
5 gentlemen, and presenting yourselves for jury duty in this  
6 case, in a very real way, you are acting as good citizens  
7 to preserve, protect, and defend those guarantees in our  
8 Constitution, including the right to trial by jury in a  
9 civil case set forth in our Seventh Amendment.

10           Now, when the lawyers address you later this  
11 morning as a part of the jury selection process, they're  
12 going to ask you various questions, and I want you to  
13 understand that they are not seeking to pry into your  
14 personal affairs unduly. They're not attempting to be  
15 nosy, ladies and gentlemen.

16           But the lawyers in this case have the right and  
17 the obligation to ask you questions for purposes of  
18 securing a fair and an impartial jury to hear the evidence  
19 in this case.

20           Now, I don't know if it will happen today. It is  
21 a rare occurrence. It doesn't happen often. But,  
22 occasionally, in the jury selection process, a member of  
23 the panel will be asked a question that they personally  
24 view to be so personal and so private that they're not  
25 comfortable answering it out loud in front of everyone

1 else.

2           If that should happen today -- and, again, I don't  
3 think it's likely, but if it should, each of you have the  
4 right simply to say in response, I'd like to talk about  
5 that with Judge Gilstrap. And if that's your response,  
6 I'll provide an opportunity where you can answer that  
7 question outside of the presence of everyone else on the  
8 panel.

9           Again, I don't think it's likely, but I want you  
10 to know that option is there.

11           The important thing, ladies and gentlemen, is for  
12 each of you to give full, complete, and truthful answers to  
13 the questions that you'll be asked. And please keep in  
14 mind, there are no wrong answers as long as your responses  
15 are full, complete, and truthful.

16           Now, the trial in this case will begin today after  
17 the jury is selected, and I expect that it will be  
18 completed by Thursday of next week. It's not an exact  
19 science, but I have a very good idea of what the evidence  
20 is going to be in this case, and I'm pretty confident to  
21 tell you I believe we will be finished by or before the end  
22 of Thursday of next week.

23           Now, I need to know if there are any of you on the  
24 panel that if you were selected to serve on this jury,  
25 either have a surgical procedure scheduled for you or an

1 immediate family member who is dependent upon you, or if  
2 you have already purchased non-refundable airline tickets  
3 to someplace. If you have something that would make it  
4 very difficult for you to serve if you were selected over  
5 the course of time from now through Thursday of next week,  
6 that's something I need to know about.

7 I'm not asking if it would be inconvenient,  
8 because, quite honestly, ladies and gentlemen, jury service  
9 is inconvenient, but it's very important. But if there's  
10 something more than a mere inconvenience of serving, if  
11 there's something that would make it very difficult for you  
12 to serve if you were selected, then I need to know about --  
13 about that at this time.

14 And if that's the case, anybody on the panel who  
15 feels they fall in that category, I'd like you to raise  
16 your hand at this time and let me make a note of the  
17 numbers.

18 No. 15.

19 COURT SECURITY OFFICER: And 22.

20 THE COURT: And 22.

21 Anybody else? I only see two hands.

22 Okay. Thank you very much, ladies and gentlemen.

23 At this time, I'm going to call for announcements  
24 in the case of Intellectual Ventures II, LLC, versus Great  
25 West Casualty Company. This is Civil Case No. 6:18-CV-299.

1           And, counsel, as you make your announcements, if  
2           you would identify yourselves, the members of your trial  
3           teams, and any corporate representatives that you have with  
4           you.

5           What says the Plaintiff?

6           MR. GILLILAND: Your Honor, Derek Gilliland with  
7           Nix Patterson. Along with me is Ty Wilson and Karl Rupp  
8           with my office. And we're here on behalf of Intellectual  
9           Ventures. The corporate representative today's -- for this  
10          trial is Cliff Win. And we're ready to proceed.

11          THE COURT: All right. Thank you, counsel.

12          What says the Defendant?

13          MR. GILLAM: Good morning, Your Honor. Good  
14          morning, everybody. My name is Gil Gillam. With me today  
15          is Mike Bettinger and Irene Yang. You'll be hearing from  
16          both of these in this trial. This is Brian Foote with  
17          Great West. He's our corporate representative. We  
18          represent Great West in this case. Your Honor, we're  
19          ready, as well.

20          THE COURT: Thank you, counsel.

21          Now, ladies and gentlemen, as I've told you, this  
22          is a case arising under the patent laws of the  
23          United States. And what the Plaintiff is claiming is that  
24          their patent was infringed by the Defendant, and they're  
25          seeking money damages because of that infringement.

1           The Defendant denies that it has infringed the  
2 Plaintiff's patent, and the Defendant contends that the  
3 patent asserted by the Plaintiff is invalid.

4           Now, what I've told you is a very informal, in  
5 layman's term, overview of what the case is about. I know  
6 that each of you on the panel has seen the patent video  
7 film prepared by the Federal Judicial Center. And having  
8 seen that, you already know more about a patent case than  
9 most citizens in East Texas do when they appear for jury  
10 duty.

11           As I mentioned, the lawyers on both sides will  
12 shortly question the members of the panel to gather  
13 information appropriate for them to exercise their strikes  
14 and complete the process of selecting the jurors who will  
15 try this case.

16           Again, ladies and gentlemen, there are no wrong  
17 answers to the questions that you may be asked as long as  
18 you give full, complete, and truthful responses.

19           Now, if in that questioning process you should be  
20 asked a question -- any one of you should be asked a  
21 question that I think is improper, I will certainly stop  
22 the lawyers, and I will certainly intervene.

23           But I want you to understand, ladies and  
24 gentlemen, these are all experienced trial lawyers. They  
25 know the rules that govern jury selection in this court.

1 They're familiar with the Court's local rules. And I don't  
2 expect that to happen.

3 But if an improper question should be asked,  
4 I'll certainly not hesitate to intervene in the process.

5 One thing, however, I do want to call your  
6 attention to before the lawyers begin their questioning,  
7 because it's possible they will ask you about this during  
8 the time they question the panel, is the burden of proof  
9 that's going to be applied in this case.

10 In a patent case, the jury may be called upon to  
11 apply two different burdens of proof. The jury may apply a  
12 burden of proof known as the preponderance of the evidence.  
13 I'll say that again, the preponderance of the evidence.

14 And the jury may also apply a second burden of  
15 proof known as clear and convincing evidence. I'll repeat  
16 that, clear and convincing evidence.

17 Now, if you're responding to the lawyers'  
18 questions about your ability to apply properly the burden  
19 of proof in this case, I need to instruct you that when a  
20 party has the burden of proof on any claim or defense by a  
21 preponderance of the evidence, that means that you, the  
22 jury, must be persuaded by the credible or believable  
23 evidence that that claim or defense is more probably true  
24 than not true. Let me repeat that, more probably true than  
25 not true.

1           Sometimes this is talked about as being the  
2 greater weight and degree of credible testimony.

3           Let me see if I can give you an example that may  
4 help you understand what I'm talking about. We don't have  
5 a statue or a picture in here, but I think all of you have  
6 seen, and I'm comfortable that all of you have seen images  
7 or pictures of the statue of the Lady of Justice. She's  
8 blindfolded, and in her left hand above her she holds the  
9 Scales of Justice that are equally balanced. I'm sure all  
10 of you have seen that at one time or another.

11           If you think about that image in regard to the  
12 burden of proof of a -- of the preponderance of the  
13 evidence, think about it this way. Over the course of this  
14 trial, evidence is going to be presented by the Plaintiff  
15 and by the Defendant. And that evidence will go on one  
16 side of those scales or the other side of those scales.

17           Those scales start out exactly equal and exactly  
18 balanced. But over the course of the trial, evidence will  
19 be put on each side of those scales by the competing  
20 parties.

21           When all the evidence has been heard, the jury is  
22 going to be asked to answer certain questions. If the  
23 party who has the burden of proof on any question has those  
24 scales with all the evidence produced through the trial on  
25 both sides of it, if those scales on balance should tip

1 toward the party who has the burden of proof by a  
2 preponderance of the evidence, then they have met that  
3 burden of proof, even if those scales tip ever so slightly.  
4 That equates to the preponderance of the evidence.

5           On the other hand, ladies and gentlemen, with  
6 regard to the second burden of proof that will be applied  
7 in this case, that burden of proof is called clear and  
8 convincing evidence. And when a party has the burden of  
9 proof on any defense by clear and convincing evidence, it  
10 means that the jury must have an abiding conviction that  
11 the truth of the party's factual contentions are highly  
12 probable. Let me say that again, an abiding conviction  
13 that the truth of the party's factual contentions are  
14 highly probable.

15           The clear and convincing evidence standard is a  
16 higher standard than the preponderance of the evidence  
17 standard. If you think back to the example I gave you of  
18 those Scales of Justice, and over the course of the trial,  
19 though they start out balanced, evidence from both parties  
20 is placed on one side or the other of those scales, and  
21 when all the evidence is in, if a party has the burden of  
22 proof by clear and convincing evidence and you look at  
23 those scales, if they tip in favor of the party who has the  
24 burden of proof and they tip more than ever so slightly, if  
25 they definitely tip in favor of that party, then that party



1 has met the burden of proof of clear and convincing  
2 evidence. But they must tip more than ever so slightly.

3 Now, ladies and gentlemen, these two burdens of  
4 proof that will be applied in this case are very different  
5 and have nothing to do with a third burden of proof  
6 I'm equally sure you've all heard about in the media and on  
7 television and in other places, and that third burden of  
8 proof is called beyond a reasonable doubt.

9 Beyond a reasonable doubt is the burden of proof  
10 applied in a criminal case. It has absolutely no  
11 application whatsoever in a civil case.

12 You should not confuse beyond a reasonable doubt  
13 with clear and convincing evidence. It's not as high as  
14 that.

15 If you think about the spectrum of evidence from  
16 preponderance of the evidence on one end, where the scales  
17 must be tipped but ever so slightly in favor of the party  
18 with that burden, to on the other end of the spectrum,  
19 beyond a reasonable doubt, where matters must be proven to  
20 a very high degree of certainty, then the clear and  
21 convincing evidence standard is somewhere in the middle.

22 Now, I give you these instructions about the  
23 burdens of proof that will be applied in this case because  
24 it's possible that one or more of the lawyers involved will  
25 ask you in a few minutes about your ability to apply one or

1 both of those burdens of proof to the evidence that will be  
2 presented in this trial.

3 Now, before the lawyers address the panel,  
4 I'm going to let each of you at this point give me the same  
5 information about each of you that I gave you about me when  
6 we started a few minutes ago.

7 Let me explain how we're going to do that. We're  
8 going to do that one at a time. Our Court Security Officer  
9 has a handheld microphone. He's going to begin with  
10 Panel Member No. 1.

11 And when the microphone is received, if you'll  
12 stand, use the microphone -- it's a large room with a high  
13 ceiling -- make sure you use that microphone so that we can  
14 all hear you, and then if you'll give your answers to those  
15 nine questions that are on the screens in front of you and  
16 that you have in written form, as well.

17 Then we'll pass the microphone from  
18 Panel Member No. 1 to Panel Member No. 2 and so forth and  
19 so on until we cover everybody on the panel.

20 Also, ladies and gentlemen, after this is done and  
21 when the lawyers ask their individual questions thereafter,  
22 if you're asked a specific question as a member of the  
23 panel, you should stand and you should wait until the  
24 Court Security Officer brings you the handheld microphone,  
25 and then answer the specific question that you're asked by

1 one of the lawyers in the case.

2 All right. With that understanding, we'll begin  
3 with Panel Member No. 1. Ms. Hoffman, if you'll take the  
4 microphone and stand and answer those nine questions for  
5 us, please.

6 JUROR HOFFMAN: Good morning, Judge. Good morning  
7 ladies and gentlemen. I'm happy to be here.

8 My name is Rhonda Hoffman, and I live in Van,  
9 Texas. I have two grown children, a boy and a girl. Right  
10 now, I'm an assistant auditor at Van Zandt County  
11 Courthouse in Canton. I'm a retired teacher. Taught 26  
12 years. I have a degree in -- a Bachelor of Science. I'm  
13 single at the moment.

14 Number 7 doesn't apply. How -- that doesn't  
15 apply. The only jury I was on was a petit jury for a  
16 traffic violation, and we quickly took the defendant's side  
17 and fined him \$1.00 plus court cost, so that was my only  
18 experience.

19 THE COURT: Was that in municipal court or  
20 JP court?

21 JUROR HOFFMAN: It was in a justice of the peace,  
22 Precinct 1.

23 THE COURT: Okay. Thank you very much,  
24 Ms. Hoffman.

25 If you'll pass the microphone to Panel Member

1 No. 2, Mr. Rudd.

2 JUROR RUDD: Yes. I'm Ross Rudd. I have three  
3 children. They're all grown.

4 I work for Rudd Plumping Company. I'm one of the  
5 owners there. And I've been there for 35 years. I have a  
6 high school education.

7 My spouse's name is Tammy Rudd, and she is  
8 retired. She was a secretary for Chapel Hill High School.  
9 And I have had prior jury service. I was on a federal jury  
10 for -- on a criminal case.

11 THE COURT: How long ago was that?

12 JUROR RUDD: Probably 20 years ago.

13 THE COURT: Is that the only prior jury service  
14 you've had, sir?

15 JUROR RUDD: Yes.

16 THE COURT: Thank you. Thank you.

17 If you'll hand the microphone to No. 3,  
18 Ms. Edwards.

19 JUROR EDWARDS: Good morning.

20 THE COURT: Good morning.

21 JUROR EDWARDS: I am Nicole Edwards, and I live in  
22 Tyler. I have no children.

23 Currently, I am the administrative assistant for  
24 the Smith County Commissioners' Court. I've worked there  
25 for almost five years. I have a Bachelor of Science degree

1 from Texas Christian University. I am single. Never been  
2 married.

3 And my only prior jury service, I was actually  
4 called to municipal jury service a few months ago, but they  
5 actually settled before the jury could actually convene.

6 THE COURT: Thank you very much, Ms. Edwards.

7 Next is No. 4, Mr. Robinson.

8 JUROR ROBINSON: My name is Gary Robinson. I live  
9 in Martins Mill. I have three children. I'm retired from  
10 the Dallas Water Department. I worked there 32 years.

11 Okay. My wife's name is Judy. She's retired.  
12 She was a bank teller for about 20 years. And I was on a  
13 DWI case probably 20 years ago.

14 THE COURT: And where was that?

15 JUROR ROBINSON: Kaufman County.

16 THE COURT: And tell us about your educational  
17 background.

18 JUROR ROBINSON: High school.

19 THE COURT: All right, sir. Thank you very much.

20 JUROR ROBINSON: All right. Thank you.

21 THE COURT: No. 5, Mr. Powell.

22 JUROR POWELL: Good morning, Judge.

23 Scott Powell. Three children. Worked for ETEX  
24 Telephone 30 years. Outside plant supervisor the last six  
25 years.

1           My wife's name is Virginia. She works at  
2 H&R Block. Been there for 10 years. And I've never been  
3 on a jury here. I'm looking forward to it.

4           THE COURT: Thank you, sir. Tell us about your  
5 education.

6           JUROR POWELL: High school.

7           THE COURT: High school.

8           JUROR POWELL: Henderson High School.

9           THE COURT: Thank you, sir.

10          No. 6 is next, Ms. Whitaker.

11          JUROR WHITAKER: My name is Teresa Whitaker.

12 I live in Tyler. I have three grown children.

13          I work for Chapel Hill ISD as the HR specialist.  
14 I've been with the district for 16 years. I have a high  
15 school education and currently enrolled in college. I am  
16 divorced, so I have no spouse.

17          I have served on a federal jury, but it's been  
18 probably 30, 35 years ago, and it was a civil case.

19          THE COURT: All right. Thank you very much.

20          No. 7 is next.

21          JUROR HYZER: My name is Karl Hyzer. I live in  
22 Chandler, Texas. I have two adult children.

23          I currently work for UT Health East Texas Athens  
24 as a security officer. And I'm retired 26 years Federal  
25 Bureau of Prisons where I was in corrections. I have a

1 high school diploma and some college in criminal justice.

2 My wife's name is Becky. She has always been a  
3 homemaker, and no prior jury service.

4 THE COURT: Thank you, sir.

5 If you'll hand the microphone to the Court  
6 Security Officer, he'll take it around to Panel Member No.  
7 8.

8 JUROR MENDIETTA: Good morning, Your Honor. My  
9 name is Uvence Mendietta, and I'm from Palestine, Texas.  
10 I have one daughter. And I am retired. I worked as an  
11 engineer for the Union Pacific Railroad for 17 years, and  
12 I was a correctional officer for 15 years.

13 THE COURT: Where were you a correctional officer?

14 JUROR MENDIETTA: At the Michael Unit here in  
15 Palestine.

16 THE COURT: Thank you, sir.

17 JUROR MENDIETTA: I got a two-year college degree.  
18 My wife's name is Diana Mendietta. She's a teacher for  
19 44 years and still working.

20 And that's --

21 THE COURT: Have you ever had jury service before?

22 JUROR MENDIETTA: No, sir.

23 THE COURT: Have not. Thank you, sir.

24 If you'll pass the microphone to No. 9, Ms. Bunt.

25 JUROR BUNT: Good morning. My name is Stacey

1 Bunt. I have two grown children. I live in Longview.

2 I work for Brian Bunt, who is my husband, and an  
3 attorney with Freeman Mills in Longview. I've worked there  
4 for approximately 10 years, but I've worked for my husband,  
5 Brian, for probably almost 20. I have a bachelor's degree.

6 As I said, my husband is Brian Bunt, and he is an  
7 attorney in Longview. I have not had any prior jury  
8 service.

9 THE COURT: All right. Thank you, ma'am.

10 Next is No. 10, Mr. Upson.

11 JUROR UPSON: Matthew Upson. Two children. I  
12 work for American Electric Power. I'm a serviceman there.  
13 Been there 10 years. I have a certificate from TSTC for  
14 line work.

15 Spouse, Lindsay. She stays at home, and she does  
16 online sales through Monet. She's been doing that for  
17 about a year. And no prior jury service.

18 THE COURT: Thank you very much.

19 Next is No. 11, Mr. Johnson.

20 JUROR JOHNSON: Good morning, Your Honor.

21 THE COURT: Good morning.

22 JUROR JOHNSON: My name is Danny Johnson. I have  
23 five grown children.

24 I work for Eastman Chemical Company in Longview as  
25 a power distribution technician. I've worked there about



1 10 years. My educational background, high school, some  
2 college, and most of it is technical -- technical  
3 background.

4 My wife's name is Catherine. She is a prior  
5 bakery owner. She's currently not working, and we sold the  
6 bakery a couple of years ago. She did that for about three  
7 years. And no prior service.

8 THE COURT: All right. Thank you, sir.

9 Next is No. 12.

10 JUROR CREMERS: Good morning, Judge.

11 THE COURT: Good morning.

12 JUROR CREMERS: My name is Emily, and I live in  
13 Lindale, Texas. I do not have any children. I work at  
14 Kawa's. It's a hibachi grill and sushi restaurant in  
15 Tyler. I've been there for four months. I completed high  
16 school. I'm not married.

17 And I served at a jury -- I believe it was a  
18 criminal case -- about a couple of years ago.

19 THE COURT: And where was that?

20 JUROR CREMERS: Smith County.

21 THE COURT: All right. Pronounce your last name  
22 for us.

23 JUROR CREMERS: Cremers.

24 THE COURT: Cremers. Thank you very much.

25 Next is 13, Ms. Coleman.

1 JUROR COLEMAN: Yes. I am Evelyn Coleman. I have  
2 two daughters up in Cleveland, Ohio. I worked for Ohio  
3 Bell in Cleveland for about 20 years and left when my  
4 husband went full time at LaTerry.

5 I have some college. Not a degree. And my  
6 husband's name is Keith Coleman, also known as The Damn  
7 Yankee Blacksmith. He's retired,  
8 31 years as a master sergeant, and is having fun welding  
9 and blacksmithing now.

10 THE COURT: What branch of the service did he  
11 retire from?

12 JUROR COLEMAN: Army.

13 THE COURT: Okay.

14 JUROR COLEMAN: And this is the first time that  
15 I have been called to the honorable duty of jury service.

16 THE COURT: All right. Thank you, ma'am.

17 JUROR COLEMAN: You're welcome.

18 THE COURT: Next is No. 14, Mr. Covey.

19 JUROR COVEY: Good morning. My name is Matthew  
20 Covey. I'm from Flint, Texas. I have one two-year old.  
21 I currently work for Hyster-Yale Group, a machinery  
22 company. We do data analytics for telemetry for forklifts  
23 mainly. I've worked there about a year and a half.

24 I have a Bachelor of Science in information  
25 technology. My spouse's name is Sonya, and she's an

1 elementary school teacher. Worked there for about five  
2 years. And no prior jury service.

3 THE COURT: All right. Thank you very much.

4 Next is Panel Member No. 15.

5 JUROR SCHRECK: Good morning. My name is Debra  
6 Schreck. I have one grown daughter and currently have  
7 custody of my great niece and nephew. I work for the  
8 City of Tyler, vehicle services department. I've been  
9 there for a little over 10 years.

10 I have a high school diploma. My spouse's name is  
11 Becky. She's employed by Republic Services. She's been  
12 there for 27 years. And I've served on a criminal case in  
13 Smith County before.

14 THE COURT: How long was that -- how long ago,  
15 ma'am?

16 JUROR SCHRECK: A long time. 10 years plus  
17 probably.

18 THE COURT: That's fine. Thank you very much.

19 Next is No. 16, Mr. Elliott.

20 JUROR ELLIOTT: My name is Carl Elliott. I live  
21 in Winona, Texas. And I have two children that I have  
22 custody of. And I work for Crosby Group. It's a  
23 manufacturing company. And been there 15 years.

24 THE COURT: What do they manufacture?

25 JUROR ELLIOTT: I am not married, divorced.

1 THE COURT: What does Crosby Company manufacture?

2 JUROR ELLIOTT: Lifting products, hooks, binders.

3 THE COURT: And what do you do for them?

4 JUROR ELLIOTT: I do -- I'm -- they call it a  
5 trimmer maker, so in the forging process, I have to get the  
6 things ready for the dies.

7 THE COURT: So you work in the manufacturing  
8 process?

9 JUROR ELLIOTT: Yes.

10 THE COURT: Okay. Sorry for the interruption.  
11 Go ahead.

12 JUROR ELLIOTT: That's fine. And I'm divorced.  
13 And I served on a jury in Gregg County and -- actually two  
14 in Gregg County. Both civil. And it was child custody  
15 case.

16 THE COURT: And how long ago was that,  
17 Mr. Elliott?

18 JUROR ELLIOTT: Like '83 -- 1983.

19 THE COURT: All right, sir. Thank you very much.  
20 Next is No. 17, Mr. Turner.

21 JUROR TURNER: My name is Clinton Turner. Live in  
22 Houston. I have no children. Director of human resources  
23 for Pico Technologies Oil & Gas Company. I have a  
24 master's. I've been with Pico for a year. Was a CPA for  
25 20 years prior to that. I have no spouse. And I have not

1 had any prior service.

2 THE COURT: All right. Thank you very much. If  
3 you'll hand the microphone to No. 18, Mr. Lewis.

4 JUROR LEWIS: My name is Mike Lewis. Two grown  
5 children. Place of employment, I'm retired. Just under  
6 30 years for a large water agency in Southern California.  
7 I, like you, Judge, got here as soon as I could.

8 Educational background, JC degree and several tech  
9 certificates. Kim, wife. She's retired also.  
10 Veterinarian technician. No -- been in this stage many  
11 times, but never served.

12 THE COURT: All right. Thank you, sir.

13 Next is No. 19, Ms. Waters.

14 JUROR WATERS: Hi. I'm Lindsay Waters, and I live  
15 in Tyler. I don't have any children. I currently am  
16 employed by the University of Texas Health Science Center  
17 at Tyler as a physician recruiter for the UT Health system.  
18 I've worked there about five years.

19 I have a Bachelor's from Cornell University. My  
20 husband's name is BJ. He's currently unemployed and taking  
21 care of some family members who are ill, but he's in the  
22 golf business. He's been a golf pro for many years. And  
23 I have never served on a jury before, but I have been  
24 called many times.

25 THE COURT: Thank you, ma'am.

1           Next is No. 20, Mr. Harper.

2           JUROR HARPER: Hello. My name is Terry Harper.  
3 I live in Wills Point. No children. I've been in real  
4 estate services for 30 years -- 30 years plus. Brokerage  
5 owner, mortgage lending, all types in that. I got a  
6 Bachelor of Arts from the University of Dallas. I'm not  
7 married. And I've been called but never served.

8           THE COURT: Thank you very much, sir.

9           Next is No. 21.

10          JUROR ANDREWS: Hi. My name is Kaitlin Andrews.  
11 I do not have any children. I currently work as a nurse  
12 over at Christus Good Shepherd in Longview. I do their out  
13 patient infusion kind of services. I've worked there about  
14 six years. I have a Bachelor's of Science degree. I'm not  
15 married. And I have not served on a jury before.

16          THE COURT: Thank you, ma'am.

17          The Court Security Officer will get the microphone  
18 from you. He'll take it around to No. 22, Ms. Hambrick.

19          JUROR HAMBRICK: Good morning. My name is Karla  
20 Nichols Hambrick. I live here in Tyler, Texas. I have two  
21 grown children. I currently work for Clinical Pathology  
22 Lab. I've been there 38 years. It's a medical lab.  
23 I retired from J.C. Penney's after part time -- after 28  
24 years part time. I'm currently working part time at Pier 1  
25 Imports. No spouse. And some high school -- some college

1 education. And no prior jury service.

2 THE COURT: Thank you, ma'am. If you'll hand the  
3 microphone to Ms. Garcia, No. 23.

4 JUROR GARCIA: My name is Evelyn Garcia. And  
5 I live in Tyler. I don't have any children. And  
6 I currently work for M Chest Pharmacy as an accounts  
7 payable specialist. I've been there for almost two years.  
8 I have a Bachelor's degree in business administration. I'm  
9 not married. And I have no prior jury service.

10 THE COURT: Thank you, ma'am.

11 Next is No. 24, Mr. Reding.

12 JUROR REDING: Good morning. My name is Garrett  
13 Reding. I live in small town, Benton, Texas. I don't have  
14 any children. I work for JDS Surveying in Van. I've  
15 worked there for two and a half years.

16 I have a high school diploma. I'm not married.  
17 And I have not served.

18 THE COURT: You actually work the surveying  
19 crews --

20 JUROR REDING: Yes, sir.

21 THE COURT: -- or work in the office?

22 JUROR REDING: No, I -- I'm a crew chief.

23 THE COURT: Okay.

24 JUROR REDING: Yes, sir.

25 THE COURT: Thank you very much.

1 JUROR REDING: Thank you.

2 THE COURT: If you'll hand the microphone to  
3 No. 25, Ms. Torres.

4 JUROR TORRES: My name is Jeanette Torres. I live  
5 in Whitehouse. I don't have any children. I work for an  
6 engineering firm in Tyler. I've worked there since August.  
7 Some college. No spouse. And I served on a jury in August  
8 of last year.

9 THE COURT: And what's the name of the engineering  
10 firm that you work for.

11 JUROR TORRES: IPM.

12 THE COURT: Do they do civil engineering?

13 JUROR TORRES: Yes.

14 THE COURT: Okay. Thank you very much, ma'am.  
15 Next is No. 26, Mr. Allen.

16 JUROR ALLEN: Thank you. My name is Joe Allen.  
17 I have two grown sons. I work for Legacy Hospice here in  
18 Tyler in administration. I've been there for about  
19 10 years. I graduated from Texas College of Mortuary  
20 Science in Dallas. My wife of 34 years name is Alisa. She  
21 basically has been a homemaker all of our marriage.  
22 I served on a jury in Tarrant County, Texas, probably  
23 30 years ago -- 30 plus years ago. It was a civil case. A  
24 back injury at work case.

25 THE COURT: And that's the last time you've served



1 on a jury?

2 JUROR ALLEN: I was empaneled in Athens, Texas,  
3 probably 10 to 12 years ago, but the case was settled  
4 before it got started.

5 THE COURT: All right, sir. Thank you very much.

6 JUROR ALLEN: Thank you.

7 THE COURT: Next is No. 27, Mr. Nichols.

8 JUROR NICHOLS: Hello. My name is Reginald  
9 Nichols. Tyler. No children. I work -- I work at Target  
10 for 19 years. High school education. Never married. No  
11 prior service.

12 THE COURT: All right, sir. Thank you.

13 No. 28 is next, Ms. Jones.

14 JUROR JONES: I'm Debbie Jones. I live in  
15 Longview. I have two grown children. I work for Sam's  
16 Club. I stock at night. I've worked there 12 years.  
17 Graduated high school. No spouse. And I served on a civil  
18 jury, like, 30, 40 years ago. It's too long ago.

19 THE COURT: All right, ma'am. Thank you very  
20 much.

21 Thank you very much, ladies and gentlemen.

22 Now, I need to say a couple more things to you  
23 before I turn the questioning over to the lawyers.

24 The jurors that are actually selected to serve in  
25 this case will serve in the role as the judges of the

1 facts. And the jurors selected will make the sole  
2 determination about what the facts are in this case.

3 Now, my job as the Judge is to rule on questions  
4 of law, evidence, and procedure, to maintain the decorum of  
5 the courtroom, and to oversee the flow of the evidence  
6 during the trial.

7 Also, let me say a couple of things to you about  
8 our judicial system that hopefully will put things in a  
9 proper perspective for you.

10 In any jury trial, such as this one, besides the  
11 parties themselves, there are always three participants,  
12 the jury, the Judge, and the lawyers.

13 With regard to the lawyers, it's important for  
14 each of you to understand that our judicial system is an  
15 adversary system, which means simply that during the course  
16 of the trial, each of the parties, through their lawyers,  
17 will seek to present their respective cases to the jury in  
18 the very best light possible.

19 Now, it should be no surprise to any of you that  
20 lawyers as a group are often criticized in the public and  
21 in the media, and the Court is of the opinion and has  
22 recognized that at least some of this is because of a basic  
23 misunderstanding about our adversary system in which the  
24 lawyers act as advocates for the competing parties.

25 As an advocate, a lawyer is ethically and legally

1 obligated to zealously assert his or her client's position  
2 under the rules of our adversary system, and by presenting  
3 the very best case possible on behalf of their clients, the  
4 lawyers hopefully will enable the jury to better weigh the  
5 relevant evidence, to determine the truth, and to arrive at  
6 a just verdict based on the evidence.

7           Now, this adversary system of justice has served  
8 our nation well for over 200 years, and America's lawyers  
9 have been, are now, and will be in the future an integral  
10 and indispensable part of the process.

11           So as we go forward over the course of this trial,  
12 even though it's possible I might occasionally frown from  
13 time to time at some of the lawyers, it's simply because  
14 I'm trying to make sure that their advocacy doesn't get  
15 outside the boundaries of our adversary system.

16           But please understand, ladies and gentlemen, they  
17 are simply doing their jobs, and I think it's important for  
18 you to keep that in mind as we go forward.

19           Also, ladies and gentlemen, let me tell you that  
20 during the course of this trial, I'm going to do my very  
21 best to make sure that none of you on the jury have any  
22 idea about what I think about the evidence because  
23 determining the facts in this case from the evidence is the  
24 sole responsibility of the jury. It's not my  
25 responsibility.

1           So those of you selected on the jury should not  
2 take anything you see or you hear or you think you see or  
3 hear that comes from me as something that you should  
4 consider about deciding and determining the ultimate facts  
5 in this case.

6           All right. At this point, we will now have  
7 counsel address the panel on behalf of their respective  
8 clients.

9           Mr. Gilliland, you may address the panel on behalf  
10 of the Plaintiff.

11           MR. GILLILAND: May it please the Court.

12           THE COURT: Would you like a warning on your time?

13           MR. GILLILAND: Yes, Your Honor.

14           Could I have a three-minute warning?

15           THE COURT: You may.

16           MR. GILLILAND: Good morning.

17           JURORS: Good morning.

18           MR. GILLILAND: Let's try that again. It's a  
19 beautiful day outside, and some of y'all are going to get  
20 to experience the rest of it, and some of y'all are going  
21 to get to learn a lot more about patent cases.

22           So good morning.

23           JURORS: Good morning.

24           MR. GILLILAND: Thank y'all very much for being  
25 here. Much like Judge Gilstrap, I believe that jury

1 service is the second highest service that we, as citizens  
2 of the United States, can provide.

3 And I know several of you, thanks to your  
4 questionnaires and thanks to the questions you answered  
5 before, have actually performed the first highest type of  
6 jury -- of public service you can provide, and that's  
7 military service.

8 I believe Mr. Hyzer, Mr. Covey, Ms. Coleman's  
9 husband, and Mr. Mendieta, I believe have all -- and  
10 I don't know if I missed anybody. Anybody that I missed  
11 that's served in the military at any time?

12 Well, thank you very much for your service in the  
13 military. And thank you all for performing the second  
14 highest service you can perform as citizens, and that's  
15 showing up for jury duty, because this is a very important  
16 case. As you've seen, there are a lot of very serious  
17 lawyers on both sides of this case.

18 Now, my name is Derek Gilliland, and I am -- I'll  
19 actually answer the same questions y'all did to just give a  
20 little bit of my background. But I am an attorney. I live  
21 in Longview, Texas.

22 I've got four children, two of them in college and  
23 two of them in high school. One of them is -- is playing  
24 soccer at UT Tyler now, and I was fortunate enough to go  
25 watch her play a little bit last night.

1           As I said, I work for Nix Patterson & Roach. Been  
2 there for -- or Nix Patterson. Excuse me. Been there for  
3 10 years now, 11 years, I guess. Time flies. So it's  
4 adding up. I, of course, have a law degree from  
5 Baylor University and an undergraduate degree in  
6 engineering from Texas A&M.

7           My wife's name is named Kelly Gilliland, lives  
8 with me. We've been married for -- don't tell her I  
9 hesitated, but I think it's 25 plus years. She's a  
10 veterinarian, a part-time veterinarian and a full-time mom  
11 to the kids in Longview.

12           And I have been in your shoes on three separate  
13 occasions, twice on criminal cases, once on a will contest,  
14 and I have never gotten past this point. For some reason,  
15 I've never made it all the way on to a jury.

16           Now, with me today at counsel table are two of my  
17 colleagues, Ty Wilson and Karl Rupp with my law firm  
18 Nix Patterson. And I'll just ask, do -- does anybody here  
19 recognize either of those gentlemen or -- or know me?

20           Okay. I don't see any hands.

21           And also with us at counsel table, as we  
22 introduced, is Mr. Cliff Win. He is the director of patent  
23 litigation for a company called Intellectual Ventures. Is  
24 anybody familiar or recognize Mr. Win or familiar with his  
25 company, Intellectual Ventures?

1           Okay. I don't see any hands on that one.

2           How about, at opposing counsel's table, are two  
3 attorneys from a law firm called Sidley. And it's a  
4 national law firm. So we've got Ms. Irene Yang and  
5 Mr. Mike Bettinger. Does anybody recognize or know either  
6 of those people?

7           And, finally -- and I don't see any hands, so  
8 I'll take that as a no, nobody knows them.

9           Finally, we have Mr. Gil Gillam sitting at the  
10 table for Great West. And Mr. Gillam's primary office is  
11 over in Marshall, Texas. Does anybody know Mr. Gillam or  
12 any of the people at his firm, his firm is Gillam & Smith?

13           Ms. Bunt, we'll see if we can get you a microphone  
14 real quick.

15           JUROR BUNT: Yes, I know Mr. Gillam.

16           MR. GILLILAND: Okay. And do you know his  
17 partner, Melissa Smith, as well?

18           JUROR BUNT: I don't know her.

19           MR. GILLILAND: Okay. And how long have you known  
20 Mr. Gillam?

21           JUROR BUNT: Several years. He actually lives up  
22 the street from me.

23           MR. GILLILAND: Oh. So y'all are neighbors.

24           JUROR BUNT: Yes.

25           MR. GILLILAND: And does the fact that you live

1 near Mr. Gillam or know Mr. Gillam, would that cause you to  
2 start out favoring his side over our side of the case?

3 JUROR BUNT: Probably not.

4 MR. GILLILAND: Okay. You said probably not.  
5 That's kind of a hedge word. You have some doubt in your  
6 mind about it?

7 JUROR BUNT: Well, he's -- I mean, I don't know  
8 how to answer that, but it probably would not hinder my --  
9 my decisions.

10 MR. GILLILAND: Okay. Now, the company that --  
11 that Mr. -- you can go ahead and hand the mic back. Thank  
12 you very much.

13 The company that Mr. Smith [sic] represents and  
14 the other attorneys represent is called Great West Casualty  
15 Corporation, and it's primarily a trucking insurance  
16 company.

17 And what this case is about is my client,  
18 Intellectual Ventures, several years ago acquired, they  
19 purchased a patent, much like you would purchase a deed to  
20 property, and then over time, they came to believe and  
21 we're here because we believe that Great West Casualty  
22 Corporation infringes on that patent. They trespass on  
23 that patent. And so we've alleged that they trespass.

24 Now, they, of course, claim that they don't  
25 trespass, and if they -- they do trespass, then they claim



1 that the patent is invalid.

2 And then we also have allegations and -- and will  
3 put on evidence about the value we think or the amount of  
4 use that we believe they used Intellectual Ventures'  
5 property.

6 And, of course, in addition to claiming they don't  
7 trespass and that the patent is invalid, then Great West  
8 says, well, if they do owe them anything, it's not nearly  
9 as much as we say. So those are the basic contentions of  
10 the lawsuit.

11 Now, let me ask you this right off the bat,  
12 knowing that Intellectual Ventures acquired the patent,  
13 they did not come up with the invention -- and the  
14 inventors of the patent -- we're going to refer to it as  
15 the '177 patent. The full number for it is 7,516,177. And  
16 those of you that make it on the jury will have a copy of  
17 that in a notebook for you.

18 But the inventors of the '177 patent do not work  
19 for Intellectual Ventures. Intellectual Ventures acquired  
20 it much like they would a deed to property or a piece of  
21 real estate.

22 Now, knowing that Intellectual Ventures did not  
23 invent the '177 patent but is asserting it against  
24 Great West, does anybody have concerns or issues with that  
25 or problems with the fact that Intellectual Ventures bought

1 the patent and is now asserting it, claiming that  
2 Great West Casualty Corporation trespasses? Does anybody  
3 have a problem with that? Any concerns about it at all?  
4 Some folks do, you know. It's no big deal.

5 All right. Well, thank you very much. I don't  
6 see any hands, so I assume nobody has a problem with that.

7 Now, one of the things I do want to talk about,  
8 too, though, is -- and you will hear and you've seen it on  
9 your questionnaire is that there's a company that's  
10 mentioned call BITCO. And it's -- it's also owned by the  
11 same parent corporation that the Defendant, Great West, is  
12 owned by.

13 Now, I understand -- I think Ms. Bunt, you  
14 indicated on your questionnaire that you're familiar with  
15 BITCO.

16 Does anybody else here, have they ever heard of  
17 Great West or BITCO or Old Republic Corporation? All  
18 right. I don't see any other hands.

19 And let me ask you a question, Ms. Bunt, if we  
20 could get you a microphone.

21 And you indicated, I guess, that your husband, who  
22 you work for, does some work for BITCO?

23 JUROR BUNT: That's correct.

24 MR. GILLILAND: And would the fact that your  
25 husband works for a company that's also owned by the same

1 parent as the Defendant in this case, would that affect  
2 your ability to be fair and impartial in this case?

3 JUROR BUNT: I think that would, yes.

4 MR. GILLILAND: I really do appreciate your  
5 honesty. Because what we're after -- and you can give the  
6 microphone back.

7 What we're here today is to find out who -- who's  
8 the right juror for this case because we're not all suited  
9 to be jurors on every case. You know, we all come into  
10 court with -- with things that have happened in our lives  
11 and backgrounds in our lives that -- that it would make it  
12 very, very difficult to sit and be completely unbiassed.

13 I believe -- is it -- Mr. Robinson, are you the  
14 retired fireman? I'm sorry, who is the retired --  
15 I thought somebody was retired fire -- fire department.  
16 I got -- I got my notes off, I guess, a little bit.

17 Okay. Let's see, Mr. Robinson, where are you  
18 retired from?

19 JUROR ROBINSON: Dallas Water Department.

20 MR. GILLILAND: Dallas Water Department. I guess  
21 my hearing is as good as I thought it would be. And if you  
22 don't mind, would you tell us what you did at the water  
23 department?

24 JUROR ROBINSON: I was a plant operator.

25 MR. GILLILAND: Okay. I guess I heard Dallas

1 and -- and the water went so fast, I heard Dallas Fire  
2 Department, so...

3 JUROR ROBINSON: We just supplied the water.

4 MR. GILLILAND: I got you. Well, that's a very  
5 important part of that process, isn't it?

6 JUROR ROBINSON: Yes.

7 MR. GILLILAND: And what did you do at the plant?

8 JUROR ROBINSON: We made drinking water basically.

9 MR. GILLILAND: Oh, did you -- did you operate the  
10 equipment and run the -- the pumps and make sure everything  
11 was working properly?

12 JUROR ROBINSON: Yes, sir.

13 MR. GILLILAND: Okay. And how long were you  
14 working there?

15 JUROR ROBINSON: 32 years.

16 MR. GILLILAND: Okay. Thank you very much.

17 Now, one of the things that can affect whether  
18 somebody can, of course, be fair and impartial is whether  
19 they have been involved in a lawsuit before. And -- and  
20 I understand from the questionnaires that several people  
21 have been involved in a lawsuit.

22 If you could, if I could see a show of hands of  
23 everybody who's been either a Plaintiff or a Defendant in a  
24 lawsuit? If you wouldn't mind, just raise your hands up  
25 high to make sure we can get them. Okay. I see -- when

1 I call out your number, if you put your hand down. So

2 I see No. 1, No. 2.

3 Anybody else on the first row?

4 Okay. Second row? No. 11. Nobody else -- oh,  
5 I'm sorry.

6 JUROR MENDIETTA: Eight.

7 MR. GILLILAND: Yes, sir, Mr. Mendietta. Eight,  
8 11.

9 Okay. 15.

10 Is that 18? Thank you, sir.

11 20.

12 Okay. Anyone else that's been a party to a  
13 lawsuit? Okay. And Juror No. 1, is it Ms. Hoffman?

14 JUROR HOFFMAN: Yes, sir.

15 MR. GILLILAND: And can you tell us, what was the  
16 nature of that lawsuit?

17 JUROR HOFFMAN: We live across the road from  
18 Pure Oil -- or Union Oil, I don't remember for sure. They  
19 since shut down that plant, but they were putting gases  
20 into the atmosphere, and it's a tank farm there, so one of  
21 the tanks burst, and it ran across my neighbor's property.

22 What happened is it was a large -- it was  
23 everybody that lived across from this plant that jointly  
24 sued the company. Ours was because they -- because of this  
25 chemical, they were in the air, and it smelled -- it

1 smelled really bad. And my mother was dying, and so this  
2 nauseous smell was in the air all the time. And it had  
3 been there for a long time. We just -- at that time, it  
4 was just really bad, and I guess because we were there so  
5 much, that we noticed it the most. But we felt like that  
6 chemical was known to cause gastric cancer. And that's  
7 what she had. And she was the only one of the whole family  
8 that was there 24/7 for 20 years. And that's the reason we  
9 joined the suit.

10 MR. GILLILAND: And you -- sorry, go ahead.

11 JUROR HOFFMAN: The other part was the neighbor's  
12 property got chemicals all on it. So that's -- that's  
13 basically -- she's the one that basically started it, but  
14 the chemicals and the smell and the whole thing just kind  
15 of snow-balled, and that was the reason.

16 MR. GILLILAND: So you were a Plaintiff in that  
17 lawsuit with a bunch of other people?

18 JUROR HOFFMAN: We were.

19 MR. GILLILAND: And do you recall who represented  
20 you in that?

21 JUROR HOFFMAN: It was -- no, I really don't know.  
22 It's somebody from Austin maybe or -- it was one of the big  
23 oil company lawyers.

24 MR. GILLILAND: And how many years ago did that  
25 resolve?

1 JUROR HOFFMAN: It happened in probably 2000 -- my  
2 mother died in '7, so it was two years after that, maybe  
3 2009.

4 MR. GILLILAND: And would anything about your  
5 experiences having been a Plaintiff in that have any affect  
6 on your ability to sit in judgment on this case?

7 JUROR HOFFMAN: No. It didn't have anything to do  
8 with that.

9 MR. GILLILAND: Thank you. Thank you,  
10 Ms. Hoffman.

11 I believe it was Mr. Rudd, did you raise your  
12 hand, sir?

13 JUROR RUDD: Yes, sir.

14 MR. GILLILAND: And -- and you had mentioned  
15 you -- do you own or work for or both Rudd Construction?

16 JUROR RUDD: I'm the owner, and I work for it.

17 MR. GILLILAND: Okay. And you raised your hand.  
18 Have you been a party to a lawsuit before?

19 JUROR RUDD: Yes. We fired a man, and he claimed  
20 that he was told that he was hired for life, and sued us  
21 over it. And we had to go to court over it.

22 MR. GILLILAND: Okay. And how long ago was that?

23 JUROR RUDD: Probably five years.

24 MR. GILLILAND: And has that -- has that case, has  
25 it resolved? Is it done?

1 JUROR RUDD: Yes, it resolved.

2 MR. GILLILAND: Okay.

3 JUROR RUDD: Well, actually it resolved before it  
4 went to court.

5 MR. GILLILAND: Okay. So you didn't get all the  
6 way to this stage of the case? And would anything about  
7 that -- the fact that you had been sued, would that affect  
8 your ability to sit on this case? Would you kind of feel  
9 for the Defendant or kind of lean towards them since you've  
10 been in the Defendant's shoes before?

11 JUROR RUDD: No.

12 MR. GILLILAND: Okay. And let me ask you just  
13 kind of changing gears a little bit. With -- with your  
14 construction company and you being the owner of it,  
15 would -- would sitting in court for potentially a week, you  
16 know, up until next Thursday, would that affect your  
17 ability to pay attention to the case knowing that you got  
18 all that stuff back at the office to deal with?

19 JUROR RUDD: No.

20 MR. GILLILAND: Okay. Thank you very much.

21 I believe we -- nobody else on the front row has  
22 been in a lawsuit, have they? All right. No hands.

23 So we'll go to Mr. Mendietta, No. 8.

24 JUROR MENDIETTA: Yes, sir. In 1989, I had a  
25 personal injury, and the late John O'Quinn was -- was my



1 lawyer. And there was another one back in the '80s. They  
2 dropped my wife's car from the lift, and they didn't want  
3 to pay for the repairs or anything like that, so I didn't  
4 have a choice, you know, to get a lawyer for that.

5 But as far as my personal injury, that was back in  
6 1989, and we didn't settle until 1993, four years later,  
7 I believe.

8 MR. GILLILAND: Okay. So having -- having been a  
9 Plaintiff, I guess, in those two situations, would that  
10 affect your -- your ability to be fair and impartial in  
11 this case?

12 JUROR MENDIETTA: No, sir, not at all.

13 MR. GILLILAND: Okay. Let's see, I think we  
14 had -- thank you very much, Mr. Mendietta.

15 Is it Mr. Johnson?

16 JUROR JOHNSON: Yes, sir. Yes, sir. It happened  
17 about 15 years ago. I was a Plaintiff in a case. I worked  
18 for a construction where I injured my eye pretty badly.

19 MR. GILLILAND: Pardon me, your eye?

20 JUROR JOHNSON: Yes.

21 MR. GILLILAND: Oh.

22 JUROR JOHNSON: My left eye. And my employer  
23 was -- had problems with paying medical bills, and he never  
24 would pay the medical bills. So that was the reason for  
25 the lawsuit. He still never wound up paying for the

1 medical bills because we didn't -- didn't go that far with  
2 it. The lawyer firm that I used wanted to fight for more  
3 than the medical bills, and I just didn't want to do that.

4 MR. GILLILAND: So did you wind up just dropping  
5 the whole --

6 JUROR JOHNSON: Just dropping it.

7 MR. GILLILAND: How long ago was that?

8 JUROR JOHNSON: About 15 years.

9 MR. GILLILAND: And it sounds like that wasn't --  
10 since you just dropped the whole thing, was not necessarily  
11 a positive experience?

12 JUROR JOHNSON: No, not at all.

13 MR. GILLILAND: Would that affect your ability to  
14 sit in judgment on this case?

15 JUROR JOHNSON: No, sir. Fair is fair.

16 MR. GILLILAND: Okay. Thank you very much,  
17 Mr. Johnson.

18 And I believe we come over here to Ms. Schreck.

19 And you've been a party to a lawsuit?

20 JUROR SCHRECK: We're currently -- our family is  
21 currently involved in a lawsuit against Oncor Electric  
22 Company. My nephew that we raise and my great niece and  
23 nephew that we currently have custody for his father was  
24 electrocuted.

25 MR. GILLILAND: Okay. And that's still ongoing?

1 JUROR SCHRECK: And it will probably be ongoing  
2 for a long time.

3 MR. GILLILAND: And who is representing you on  
4 that?

5 JUROR SCHRECK: Roberts & Roberts.

6 MR. GILLILAND: Here in Tyler?

7 JUROR SCHRECK: Yes.

8 MR. GILLILAND: Anything about your experience  
9 with that lawsuit affect your ability to sit on this case?

10 JUROR SCHRECK: No.

11 MR. GILLILAND: Thank you very much.

12 I believe No. 18, Mr. Lewis; is that right?

13 JUROR LEWIS: My wife and I were a defendant in  
14 a -- I don't remember the exact wording, but it was -- it  
15 was a breach-of-contract-type of issue. We owned a world  
16 champion stallion and did a breeding operation with him.

17 In the process of purchasing him, the lady we  
18 purchased from was sued for breach of contract, and then we  
19 were lumped into it for kind of induction or inducing her  
20 into breach of contract.

21 MR. GILLILAND: I see.

22 JUROR LEWIS: So it was -- it was -- it ended  
23 up -- all of it getting pitched, but it was a very, very  
24 expensive episode for us with -- you know, we countersued  
25 for fees, which, you know, they just told us, well, that's

1 part of doing business. So that was it. And that was  
2 about  
3 20 years ago.

4 MR. GILLILAND: Okay. That's what I was going to  
5 ask, how long ago that was.

6 JUROR LEWIS: Yes.

7 MR. GILLILAND: And would anything about that  
8 affect your ability to sit on this case?

9 JUROR LEWIS: No.

10 MR. GILLILAND: And then I think the last person  
11 we had was No. 20, Mr. Harper.

12 JUROR HARPER: I owned a real estate brokerage,  
13 and one of my agents was sued for not disclosing that there  
14 was a spot on a 1-acre lot that didn't quite drain properly  
15 where the previous -- where the seller that we were  
16 representing had a volleyball court, and the kids had sort  
17 of padded the -- it had washed out because it was a sandy  
18 area, and so they -- but it was -- we ended up winning.

19 MR. GILLILAND: Oh, okay. And how long ago was  
20 that, Mr. Harper?

21 JUROR HARPER: It's probably been seven or eight  
22 years.

23 MR. GILLILAND: And would it -- did that affect  
24 your ability to -- I mean, did it kind of jade you towards  
25 lawsuits or --

1 JUROR HARPER: Not really.

2 MR. GILLILAND: Would you be able to put that  
3 aside and listen to the evidence?

4 JUROR HARPER: I believe I would.

5 MR. GILLILAND: And let me ask you, since you've  
6 got the mic, you have a real estate brokerage?

7 JUROR HARPER: I had a real estate brokerage, yes.

8 MR. GILLILAND: Okay. And how long have you been  
9 in the real estate business?

10 JUROR HARPER: Since about 1985.

11 MR. GILLILAND: And one of the things I want to  
12 ask you, too, is in the real estate business, of course,  
13 people buy property, and then they sell property, right?

14 JUROR HARPER: Yes, sir.

15 MR. GILLILAND: And in your experience -- well,  
16 let me ask it this way: Do people typically sell property  
17 for the amount they paid for it, or do they try and get  
18 more than what they paid for it?

19 JUROR HARPER: Well, typically, you know, the  
20 market -- you know, it increases.

21 MR. GILLILAND: And --

22 JUROR HARPER: Increases in real estate.

23 MR. GILLILAND: Yes. I'm sorry. Go ahead.

24 JUROR HARPER: Value increases in real estate.  
25 We're lucky.

1 MR. GILLILAND: And -- and if, let's say, oil was  
2 found under a piece of property, how does that seem to  
3 affect the value?

4 JUROR HARPER: Depends on who has an interest.

5 MR. GILLILAND: All right. So if you bought the  
6 property and got mineral rights with it and they find oil  
7 under your property, are people typically limited to what  
8 they paid for that property?

9 JUROR HARPER: Well, they're actually two  
10 different things. There's a value in mineral rights, and  
11 there's a value in property -- in property rights.

12 MR. GILLILAND: Yeah. And what I'm getting at,  
13 though, is, if you own the mineral rights, then the people  
14 pay for minerals, they have to pay for what they use of the  
15 minerals.

16 JUROR HARPER: Absolutely.

17 MR. GILLILAND: And they're not limited to how  
18 much you paid for the property, are they?

19 JUROR HARPER: No.

20 MR. GILLILAND: Okay. And -- and the reason I ask  
21 that -- and you can pass the microphone back, but the  
22 reason I ask that is, in this case, as I said, Intellectual  
23 Ventures bought the patent, and now, we're asserting the  
24 patent, of course, and saying Great West trespasses on that  
25 patent.

1           And we're asking for a substantial amount of  
2 money, tens of millions of dollars for the use Great --  
3 Great West has made of the property that Intellectual  
4 Ventures owns.

5           Now, knowing that, one, does anybody -- if they --  
6 just hearing that number, think that there's no way I could  
7 ever return a verdict for tens of millions of dollars;  
8 I don't care what the evidence shows?

9           Does anybody feel that that's just too much money,  
10 regardless?

11           And I see -- is it 28? Yeah. Ms. Jones? And  
12 you're nodding your head. Do you agree with that; that's  
13 just too much money; you'd never be able to award tens of  
14 millions of dollars?

15           JUROR JONES: That's quite a bit amount, yes.

16           MR. GILLILAND: Okay. And I understand. You  
17 know, and that's the way it is. Some of us -- that's just  
18 a lot of money.

19           THE COURT: Ms. Jones, please stand up.

20           MR. GILLILAND: Oh, sorry.

21           THE COURT: I like to see you.

22           JUROR JONES: Sorry.

23           THE COURT: Go ahead.

24           MR. GILLILAND: Yeah. And so I guess, in your  
25 opinion, tens of millions of dollars would be just too much

1 money no matter what is at stake?

2 JUROR JONES: Yes, sir.

3 MR. GILLILAND: Okay. And that's fair. I mean,  
4 that's -- and that's exactly the kind of honesty we need to  
5 get to in this voir dire process.

6 Does anybody feel the same way as Ms. Jones?

7 JUROR LEWIS: I do.

8 MR. GILLILAND: Okay. And raise your hands.  
9 Let's do it that way. So we can get everybody.

10 Mr. Lewis?

11 JUROR LEWIS: Yeah.

12 MR. GILLILAND: You feel the same way, that tens  
13 of millions is just too much?

14 JUROR LEWIS: Yeah. I watch this stuff all the  
15 time, and I'm just shaking my head. I don't get it. But  
16 I guess -- you know, it could apply, you know, to a certain  
17 situation. I guess, if there was a value there and that's  
18 shown, then I guess maybe.

19 MR. GILLILAND: Maybe?

20 JUROR LEWIS: Just -- yeah.

21 MR. GILLILAND: And so you're open to --

22 JUROR LEWIS: I'm open to it.

23 MR. GILLILAND: -- the evidence?

24 JUROR LEWIS: Yeah.

25 MR. GILLILAND: But it's still a lot of money?



1 JUROR LEWIS: Yeah.

2 MR. GILLILAND: Okay. And No. 16, Mr. Elliott?

3 JUROR ELLIOTT: Yes, sir.

4 MR. GILLILAND: And --

5 JUROR ELLIOTT: I agree with what he said. It is  
6 a lot of money. I guess the evidence will -- may -- may  
7 would prove that to be correct, but that's a lot of money.

8 MR. GILLILAND: Well, and let me put it this way:  
9 If the evidence in this case is that it's -- that the use  
10 equates to about \$20 million, would you be able to consider  
11 that evidence, or are you going to say, man, that's just  
12 too much money?

13 JUROR ELLIOTT: I could consider the evidence,  
14 I guess.

15 MR. GILLILAND: Okay. Okay. Thank you very much.  
16 Anybody else feel the same way, that that's just  
17 too much money?

18 Ms. Bunt, and -- and...

19 JUROR BUNT: I feel like that's a lot of money.

20 MR. GILLILAND: Okay.

21 JUROR BUNT: Yeah.

22 MR. GILLILAND: Very good. And would you be able  
23 to consider the evidence on that?

24 JUROR BUNT: I could consider the evidence, but it  
25 is still a lot of money.

1 MR. GILLILAND: Still a lot of money. Fair  
2 enough.

3 I understand.

4 All right. Let me ask this: One of the things  
5 those of you that get on the jury are going to hear is that  
6 you don't have to even know a patent exists to be liable  
7 for trespassing or liable for infringing the patent. You  
8 can infringe a patent without ever knowing the patent  
9 existed.

10 Okay. Now, this is kind of a scaled question, so  
11 what I want to do is ask a question -- I'm going to make a  
12 statement, and if you completely agree with the statement,  
13 then you would consider yourself a 10, and if you disagree,  
14 then you would consider yourself a 0, and then you can be  
15 anywhere in between.

16 Does that make sense? It's kind of a scaled then.  
17 0, I disagree, and 10, I completely agree.

18 And here's the statement is that -- does anybody  
19 here completely agree or -- or strongly agree with the  
20 statement that to be held responsible for patent  
21 infringement, you should have to prove that the company  
22 accused of infringement knew about the patent before the  
23 company was sued?

24 Who feels like a company should have to know that  
25 the patent exists to be sued for patent infringement?

1 JUROR SCHRECK: I do.

2 MR. GILLILAND: Okay. Ms. Schreck, you strongly  
3 agree with that?

4 JUROR SCHRECK: I strongly agree with that.

5 MR. GILLILAND: Anybody else strongly agree with  
6 that or even partially agree with that? We've got -- keep  
7 your hands if you raise them up, please, so we can make  
8 sure we get all the numbers.

9 We've got Mr. Johnson, No. 11; Ms. Schreck, 15;  
10 16, Mr. Elliott; 17, Mr. Turner.

11 Anybody else that I missed?

12 And -- and while I'm thinking about it, I may have  
13 misheard. Mr. Turner, if you wouldn't mind, where did you  
14 say you live?

15 JUROR TURNER: Houston.

16 MR. GILLILAND: Pardon?

17 JUROR TURNER: Houston.

18 MR. GILLILAND: If you wouldn't mind standing up.

19 JUROR TURNER: Houston.

20 MR. GILLILAND: So you actually live in Harrison  
21 County Houston now?

22 JUROR TURNER: Yes.

23 MR. GILLILAND: Okay. And not in -- not in Smith  
24 County or up here anywhere?

25 JUROR TURNER: I have a second home in Gregg

1 County.

2 MR. GILLILAND: But your residence is down in  
3 Houston?

4 JUROR TURNER: Correct.

5 MR. GILLILAND: Okay. Thank you, sir.

6 Okay. Now, one of the things that happens in a  
7 patent case -- has anybody here ever tried to get a patent?  
8 Raise your hand if you've ever applied for or tried to get  
9 a patent.

10 Okay. One of the things that you'll see in a  
11 patent case is things get pretty technical. You get into  
12 the weeds, and this patent involves computer -- computer  
13 software and kind of the IT stuff that maybe Mr. Covey  
14 might be familiar with from -- from his work.

15 And one of the things I'm curious about because it  
16 is a lot to pay attention to and a lot to take in is  
17 I'd like to know if there's somebody -- how many of you  
18 here really agree with the statement that you -- you really  
19 enjoy taking things apart and figuring out how they work,  
20 really tinkering into them and getting down into the weeds  
21 on -- on how stuff operates?

22 Anybody here enjoy that kind of thing, really  
23 tinkering with stuff, taking it apart, figuring out what  
24 makes it work?

25 THE COURT: You have three minutes, counsel.

1 MR. GILLILAND: Thank you, Your Honor.

2 Mr. Johnson, you enjoy doing that?

3 JUROR JOHNSON: Yes, sir, I do. It's a big part  
4 of my job.

5 MR. GILLILAND: And remind me, again, where you  
6 work, sir?

7 JUROR JOHNSON: I work for Eastman Chemical  
8 Company. I'm a power distribution technician.

9 MR. GILLILAND: Okay. Anybody else like  
10 Mr. Johnson that enjoys tinkering with things and figuring  
11 out how they work?

12 Mr. Covey, you look like you're kind of nodding  
13 your head. Are you agreeing, or are you just kind of  
14 rocking in your chair?

15 JUROR COVEY: I actually prefer the --

16 THE COURT: Let's turn the microphone on. Let the  
17 Court Security Officer do that.

18 COURT SECURITY OFFICER: Test.

19 JUROR COVEY: Actually prefer to take a more  
20 iterative approach from the ground up rather than just this  
21 is the way something exists.

22 MR. GILLILAND: Okay. So really know how it's  
23 built from the ground up?

24 JUROR COVEY: Yes, sir.

25 MR. GILLILAND: Okay. Thank you very much.

1 Anybody else in the jury box, Rows 1 or 2, that  
2 really enjoying tinkering with things or taking them apart,  
3 or -- or knowing how they work and built from the ground  
4 up?

5 Anybody out here in the gallery feel that same  
6 way?

7 Okay. And the last thing -- one of the things  
8 that we cannot do as lawyers is -- is a lot of times if you  
9 wind up on the jury, you be thinking, oh, I wish -- I wish  
10 they'd have asked that question, or I wonder about this  
11 other thing. We try and hit all the stuff we think is  
12 important, but sometimes we can't get all of the  
13 information to you.

14 Is there anybody here that -- that has a real hard  
15 time making a decision if they feel like they don't have  
16 all of the information? Anybody feel that way up here in  
17 the jury box in Rows 1 or 2? I don't see any hands.

18 How about anybody out in the gallery? Anybody  
19 feel like you got to have all the information, or you  
20 can't -- can't make a decision?

21 There we go, Mr. Nichols.

22 JUROR NICHOLS: You say all information?

23 MR. GILLILAND: Yeah, what I'm -- what I'm getting  
24 at is -- is, you know, there's just some people -- and my  
25 wife accuses me of this -- you know, called paralysis by

1 analysis. I just have too many questions, and I have a  
2 hard time sometimes making a decision until I have all the  
3 answers.

4 Is that kind of how you feel?

5 JUROR NICHOLS: Yes, especially with all the money  
6 going out.

7 MR. GILLILAND: I understand. I understand.

8 Anybody else feel the same way as Mr. Nichols,  
9 just raise your hand?

10 Okay. Ms. Bunt, again. We don't need the  
11 microphone. We'll just write down we've got No. 9 and  
12 No. 17, Mr. Turner.

13 Okay. Last question because I think I'm about out  
14 of time. Is there anything that sitting where you are that  
15 you're thinking, you know, if I was in IV's shoes or if  
16 I was Mr. Gilliland, I would want to know this? Is there  
17 something that I haven't asked that you think would be  
18 important for me as a lawyer trying to do the best job  
19 possible for my client to know?

20 Is there anybody that feels like there's something  
21 I haven't asked that you'd really like to tell us, so we  
22 can know whether or not you can be a fair and impartial  
23 juror in this case?

24 THE COURT: Your time has expired, counsel.

25 MR. GILLILAND: Thank you very much.

1 THE COURT: All right. Mr. Gillam, you may  
2 address the panel on behalf of the Defendant.

3 Would you like a warning on your time?

4 MR. GILLAM: Yes, Your Honor, if I could be told  
5 when I have three minutes, as well, please?

6 THE COURT: I will. Proceed when you're ready.

7 MR. GILLAM: Good morning again, everybody.

8 Again, my name is Gil Gillam. I'm one of the  
9 lawyers that represents Great West in this case. You know,  
10 I've already noticed one problem here. My name is Gillam,  
11 and his name is Gilliland, and so these things are going to  
12 kind of bump up against one another during the trial of  
13 this case. I can assure you that's not one of the  
14 important facts that you're going to have to worry about in  
15 this case. You've got Judge Gilstrap, you've got  
16 Derek Gilliland, and you've got Gil Gillam, so we've got a  
17 lot of things working here with the Gils going on.

18 Let me tell you a little bit about myself. I've  
19 practiced law in East Texas for about 40 years now. I've  
20 got a wife who lives in Longview with me. And we've got  
21 three children, as well. They're all grown now. And we've  
22 got three little grandchildren that live up in the McKinney  
23 area. I attended college and law school down at Baylor, as  
24 well, and I've had jury service. I've actually made it  
25 past the point where you are. I actually got to serve on



1 two juries. One was a DWI, and one was a parking ticket at  
2 a Walmart in Longview.

3 Now, let me introduce you to -- again, to the  
4 other folks who are going to be working with me on this  
5 case.

6 This is Mike Bettinger. This is Irene Yang. You  
7 met them a few moments -- you'll be hearing from both of  
8 them during the trial of this case.

9 Our client, Great West, is an insurance company  
10 that its business is to provide insurance to truckers and  
11 trucking companies. And it's been around about 60 years.  
12 You're going to hear more about it during the -- during the  
13 case itself.

14 We've got a representative of the company with us  
15 here today. I introduced him to you earlier. This is  
16 Brian Foote. You're actually going to hear from Mr. Foote  
17 during the trial of this case. He is the supervisor of  
18 system development. Integrally involved in the thing that  
19 we're talking about here today. The very thing.

20 So you're going to hear from Mr. Foote during the  
21 trial of this case. The interesting thing will be whether  
22 or not we hear anything from anyone from Intellectual  
23 Ventures in this case.

24 Now, I agree with everybody else that jury service  
25 is one of the most important things that -- one of the most

1 important civic duties that we can -- we can perform. All  
2 jury duty is important. And it's -- you don't want to make  
3 promises at the beginning of the trial that you may not be  
4 able to keep, but I can promise you, the issues that you're  
5 going to decide in this case are more important than that  
6 DW -- than the traffic ticket case that I sat on in  
7 Longview about 10 years ago.

8           These are very serious issues involved in this  
9 particular lawsuit that those of you that are seated on the  
10 jury are going to get to hear.

11           So on behalf of Great West and on behalf of the  
12 folks that I'm working with today, I want to thank you also  
13 for being here.

14           Now, Judge Gilstrap has given us a few minutes to  
15 tell you what we think this case is about, and it's  
16 basically about three issues: Infringement, invalidity,  
17 and damages.

18           First, let me talk about infringement just very  
19 briefly.

20           The Plaintiff in this case, Mr. Gilliland's  
21 client, claims that we infringe what's called Claim 14 of  
22 this '177 patent. The claim is very specific in that it's  
23 got a couple of requirements in that patent.

24           You're going to hear two important words, "manage"  
25 and "content." And you'll -- you'll see why those are

1 important as we walk through this case.

2 As a part of Great West's business, they came up  
3 with a website that has what's called portals, or views,  
4 different portals that you can look at. You'll hear all  
5 about this in the trial.

6 The only information that can be changed due to  
7 some regulations which govern what Great West can do is  
8 records about certain -- personal information about drivers  
9 and insurers. That's the only thing that can be changed.  
10 And that's going to be an important fact you hear, things  
11 like driver's license numbers and status and birthdays and  
12 things like that.

13 The reason that that's important is that we think  
14 what's going to happen in this case is Intellectual  
15 Ventures is going to admit to you that information about  
16 users like that is not content. That's one of the things  
17 we talked about a few moments ago, managing content.

18 So changing information about truckers, changing  
19 information about users is not managing content as is  
20 required by the patent.

21 So our position in this case very specifically is  
22 that we don't infringe this patent.

23 The second issue is the validity of the patent,  
24 and our position in this case, which you'll hear about, is  
25 this patent should not have been issued by the

1 United States Patent Office. Why? Because there was an  
2 online education website that came out a couple years  
3 before this patent came out which did exactly the same  
4 thing.

5 You'll remember from the patent video what that's  
6 about. It's called prior art. Did exactly the same thing.

7 THE COURT: Mr. Gillam, you need to get on to  
8 specific questions.

9 MR. GILLAM: We will. Yes, Your Honor.

10 The other issue is damages, and we don't believe  
11 that the damages merit what they're claiming for tens of  
12 millions of dollars in this case.

13 Now, you've been kind enough to provide some  
14 information to us about -- on your questionnaires.

15 How many of you -- I know several of you put this  
16 on your -- on your questionnaire. How many of you have had  
17 serious issues with insurance companies because that's who  
18 we represent in this case?

19 Can I see a show of hands again?

20 Mr. Elliott. Yes, sir, what was the issue that  
21 you had with the insurance company?

22 JUROR ELLIOTT: I was driving on the loop here in  
23 Tyler, and a lady run a stop sign and hit my truck. And  
24 their insurance did -- did pay for some damages on my  
25 truck, but it wasn't enough to cover all the damages. And

1 I did end up just selling the truck because it looked like  
2 junk.

3 MR. GILLAM: All right. I actually represent an  
4 insurance company in this case, and we all have -- thank  
5 you, sir, for your -- for your answer. Let me ask you  
6 this, though. Anything about that -- that experience with  
7 an insurance company, since I represent one in this case,  
8 that's going to let me start off a little bit further  
9 behind than perhaps --

10 JUROR ELLIOTT: Yes, it will.

11 MR. GILLAM: -- the Plaintiffs in this case?  
12 Pardon me?

13 JUROR ELLIOTT: Yes, it will.

14 MR. GILLAM: It will.

15 All right, sir. Thank you.

16 Anyone else? Anyone else had an issue with an  
17 insurance company that comes to mind?

18 How many of you had like a medical claim or  
19 something like that that wasn't paid? You thought that the  
20 insurance company should paid this, and then -- all of you  
21 that think a company should pay your medical bill or your  
22 insurance company should, and they don't do it, that's not  
23 what I'm talking about here.

24 I'm talking about something like what Mr. Elliott  
25 said here a moment ago, a serious problem with an insurance

1 company that -- so you really have a mad feeling about  
2 companies like that.

3 Anybody else like that?

4 Mr. Allen, I read on your questionnaire --  
5 I thought you had a dispute with an insurance company,  
6 perhaps someone had canceled your homeowner's insurance or  
7 something like that?

8 JUROR ALLEN: Yeah. It wasn't a real dispute. It  
9 was a slab leak situation, and I had one slab leak that the  
10 insurance company paid for. I had a second slab leak, and  
11 they paid for it. The third slab leak, they wanted to  
12 cancel my homeowner's insurance.

13 We basically agreed that each of us would pay half  
14 of the slab leak, and I could continue with my insurance.  
15 I don't consider that to be what you're calling a real  
16 serious dispute. It was a dispute.

17 MR. GILLAM: All right, sir. Thank you.

18 Anybody else that I missed on that? Anyone?

19 Yes, sir. Juror No. 20.

20 JUROR HARPER: 20.

21 MR. GILLAM: Yes, sir, Mr. Harper.

22 THE COURT: If you'll use the microphone, please,  
23 Mr. Harper.

24 JUROR HARPER: Currently, I'm in the process --  
25 I had an adjustor come out, and my insurance carrier sent

1 the adjustor out. They said it was \$1800 worth of damage.  
2 It was less than my deductible. I agreed with it because  
3 of a previous claim that I had that I had no reason to --  
4 to question the adjustor.

5 And then when I got the contractor out, this  
6 became tens of thousands of dollars worth of damage that  
7 the adjustor didn't see. And -- and after looking at it, I  
8 felt like I was being played a little bit maybe.

9 MR. GILLAM: All right, sir. I'll -- again,  
10 representing an insurance company. Anything about that  
11 experience that you had that's going to start me off behind  
12 in this case?

13 Different insurance company and different  
14 situation, but to the extent that, you know, insurance  
15 companies rub you the wrong way, that's who I represent in  
16 this case. Anything about it that's going to --

17 JUROR HARPER: No, I don't think so.

18 MR. GILLAM: I'm sorry, sir?

19 JUROR HARPER: I don't believe so, no.

20 MR. GILLAM: All right, sir. Thank you,  
21 Mr. Harper.

22 Now, you introduced -- a few moments ago nobody  
23 said they knew anybody at the Plaintiff's table over here.  
24 Again, you've got Mr. Gilliland, Mr. Wilson, and Mr. Rupp.  
25 No one knew these folks; is that correct? Anyone?

1 All right. Mr. Gilliland asked you some questions  
2 about being a party to a lawsuit. I don't want to go back  
3 and replot all that same ground. But let me ask you a  
4 couple of questions.

5 Mr. Mendiotta.

6 JUROR MENDIETTA: Yes, sir.

7 MR. GILLAM: Yes, sir. Mr. O'Quinn represented  
8 you in a personal injury case way back?

9 JUROR MENDIETTA: '89. We settled in '93.

10 MR. GILLAM: All right.

11 JUROR MENDIETTA: Four years later.

12 MR. GILLAM: Okay. So you've obviously been in  
13 the same kind of shoes as the Plaintiffs are in this case.  
14 In other words, somebody bringing a lawsuit against a  
15 defendant, correct? Different -- different situation, but  
16 you've been a plaintiff, and they're the Plaintiff in this  
17 case.

18 JUROR MENDIETTA: Right. I believe it's the same  
19 situation, but mine was injury.

20 You know what I'm saying?

21 MR. GILLAM: Yes, sir.

22 JUROR MENDIETTA: Personal injury.

23 MR. GILLAM: Yes, sir.

24 JUROR MENDIETTA: So that's the difference,  
25 I believe.



1 MR. GILLAM: All right. Anything about the fact  
2 that you've been a plaintiff, and I obviously represent the  
3 Defendant, anything about the fact that you've been a  
4 plaintiff that's going to start me off behind in this case  
5 when we begin the evidence that you can think of --

6 JUROR MENDIETTA: No, sir.

7 MR. GILLAM: -- about your personal situation?

8 JUROR MENDIETTA: Not really.

9 MR. GILLAM: All right. Thank you, sir.

10 Ms. -- on the front row there, Ms. Hoffman. And  
11 we -- we've -- you described that situation with your  
12 relative. And that -- that case has been resolved now?

13 JUROR HOFFMAN: Yes, sir.

14 MR. GILLAM: Was it resolved to your satisfaction?

15 JUROR HOFFMAN: Well, not necessarily, but, yes,  
16 it was resolved, and we settled.

17 MR. GILLAM: Okay.

18 JUROR HOFFMAN: And it was -- it was also with the  
19 people that live -- I mean, we all lived right there.

20 MR. GILLAM: Yes, ma'am.

21 JUROR HOFFMAN: And so my husband was the one that  
22 worked the land, and he was out there, you know, a lot.

23 MR. GILLAM: Yes, ma'am.

24 JUROR HOFFMAN: So, yes, it was settled.

25 MR. GILLAM: All right. Well, you were a

1 plaintiff, though, in a lawsuit, your family was?

2 JUROR HOFFMAN: Yes.

3 MR. GILLAM: Again, I represent the Defendants.  
4 You've been in the Plaintiff's shoes before. Anything  
5 about that that's going to start them off a little bit  
6 further ahead in a situation like this over a patent  
7 lawsuit?

8 JUROR HOFFMAN: I don't think so.

9 MR. GILLAM: All right. Thank you, ma'am.

10 JUROR HOFFMAN: Uh-huh.

11 MR. GILLAM: Let me go to No. -- Juror No. 3,  
12 Ms. Edwards.

13 You work with the County Commissioners?

14 JUROR EDWARDS: Yes, sir.

15 MR. GILLAM: Do you do any work with -- or do you  
16 have any particular experience with websites, any -- any  
17 special training in websites, that type of thing?

18 JUROR EDWARDS: Very, very basic, putting in  
19 information, but it's like on a very elementary level.

20 MR. GILLAM: Okay. Nothing -- no particular  
21 specialized training in it, though?

22 JUROR EDWARDS: That's correct.

23 MR. GILLAM: All right. And I may have written  
24 this down wrong. Do you have experience in the  
25 insurance -- in the insurance -- in a world insurance

1 agency and things like that?

2 JUROR EDWARDS: A bit. I'm -- I'm licensed to  
3 actually sell life insurance through Primerica.

4 MR. GILLAM: Okay. And have you actually -- have  
5 you actually done that?

6 JUROR EDWARDS: No. My business world is very,  
7 very slow and low at this point in life. But I was trying  
8 to disclose as much as possible.

9 MR. GILLAM: Got a license to do it, though?

10 JUROR EDWARDS: Yes.

11 MR. GILLAM: Okay. Thank you, ma'am.

12 Let's go beyond lawsuits for a second and not just  
13 limit it to lawsuits. Have any of you ever filed a  
14 grievance or made a claim against someone other than in a  
15 court of law?

16 Does that ring a bell for anybody on the panel?  
17 Anybody?

18 Has anybody ever wanted to file a lawsuit and then  
19 just decided at the last minute, I'm not going to do it?  
20 Anybody?

21 Front row?

22 Second?

23 Anybody?

24 Excuse me. Pardon me.

25 Anybody here?

1 All right. Outside of your appearance here today,  
2 and outside of jury duty, any of you had any dealings with  
3 the court system other than Ms. Bunt over there, I'm sure,  
4 but anybody that's had any dealings with the court system,  
5 say, in the last five years, other than jury duty, this  
6 kind of thing?

7 Ms. Schreck?

8 JUROR SCHRECK: We were involved in a --

9 MR. GILLAM: I'm sorry. You need to get that  
10 microphone here.

11 JUROR SCHRECK: After my nephew died, we were  
12 involved in a custody case for the kids.

13 MR. GILLAM: Okay. Yes, ma'am. I think you did  
14 tell us about that. I appreciate that.

15 Anybody else, other than Ms. Schreck, that that --  
16 that applies to there?

17 Has anyone -- nobody's -- I think I read this,  
18 nobody's filed for a plaintiff -- for a patent, correct?

19 Anybody have a family member file for a patent?

20 Has anybody ever invented anything, where you  
21 thought this sounds like a great idea; I may think about  
22 trying to get a patent on it? Anybody on this side of the  
23 room here?

24 What about over here? Anybody?

25 Has anybody ever come up with an idea, and

1 somebody else took your idea, and they used it for their  
2 own benefit?

3 Quiet room. Anybody?

4 All right, sir. Mr. Turner, tell me about that,  
5 sir.

6 JUROR TURNER: I studying school in Guadalajara.  
7 I wrote a paper, and one of the roommates borrowed my  
8 computer. And the next day I was called in and told that  
9 I plagiarized and stole their work.

10 MR. GILLAM: Uh-oh.

11 JUROR TURNER: And I had to withdraw from the  
12 course.

13 MR. GILLAM: All right, sir. Thank you.

14 Anybody else?

15 Has anybody on the panel ever had any disputes  
16 with a corporation that you can think of? Disputes with a  
17 company, other than the things we've talked about already?

18 Any claims like that that you filed?

19 What about this, anybody believe that lawsuits are  
20 necessary to keep companies honest? Let's see a show of  
21 hands.

22 Yes, sir, we haven't talked to you yet. This will  
23 be Mr. Robinson. No, sir, I'm sorry, Mr. -- Mr. Powell.

24 JUROR POWELL: Yes, sir.

25 MR. GILLAM: Yes, sir, Mr. Powell. Tell me about

1 that.

2 JUROR POWELL: I just think that if you couldn't  
3 sue somebody for something, then you -- I had a generator  
4 get stolen on my watch back when I was -- back when I was  
5 working outside. And I had just left a few minutes, went  
6 and checked another one, came back, and he stole it. And  
7 we went to court like three or four times, and he never did  
8 show up. And I guess he just settled out of court or  
9 whatever, but it made me look bad, pissed me off. It was  
10 wintertime, and he had hooked his -- hooked up his swimming  
11 pool with it. Everybody else --

12 MR. GILLAM: I understand. So you -- you think  
13 that lawsuits really are necessary then to try to keep  
14 people honest?

15 JUROR POWELL: Yes.

16 MR. GILLAM: Okay, sir. Thank you.

17 Who feels the same way as Mr. Powell? Anybody?

18 What about the back row there?

19 Mr. -- let's see, it's No. -- No. -- let me ask --  
20 Ms. Cremers, let me ask you about that. We haven't -- we  
21 haven't heard from you yet.

22 How do you feel about that?

23 JUROR CREMERS: I believe that that's true. They  
24 are to keep people honest. I think people should show up.

25 MR. GILLAM: People just stand up and --

1 JUROR CREMERS: Yes.

2 MR. GILLAM: -- be responsible for their actions?

3 JUROR CREMERS: Yes, sir.

4 MR. GILLAM: So you think lawsuits are a necessary  
5 part of that to keep people honest?

6 JUROR CREMERS: Yes, sir.

7 MR. GILLAM: Okay. Thank you, ma'am.

8 Ms. Coleman?

9 JUROR COLEMAN: Okay. I don't know about being  
10 necessary. They should be optional, you know, depending on  
11 the individual. But if you feel that you've been wronged,  
12 you know, you try to settle it out of -- without going to  
13 court, but if you can't and it's meaningful to you, you  
14 should have the right to do that. That's -- that's -- it  
15 should be an option.

16 MR. GILLAM: Thank you, ma'am.

17 Anybody ever boycotted a company where you've  
18 gotten mad at something some company was doing and you  
19 thought, by golly, I'm not going to buy from that company  
20 again?

21 We've got a few. We've got No. 18, Mr. Lewis  
22 again; Ms. Schreck again.

23 JUROR SCHRECK: Our family boycotts Tyson because  
24 of the practices that they have decided to adopt here of  
25 late.

1 MR. GILLAM: Okay. Mr. Lewis, what about you?

2 JUROR LEWIS: I do it every day. I mean, there's  
3 always someone that pops up that, you know, dictates what  
4 I do.

5 So, I mean, it's just -- you typically -- it's a  
6 belief. You know, it's a moral -- moral thing to me. And  
7 if I don't agree with that, I don't -- I don't -- I don't,  
8 you know, use their services or purchase their products.

9 MR. GILLAM: Thank you, sir.

10 What about anybody on these two rows up here?  
11 Anybody feel the same way? Anybody?

12 That's Mr. -- Mr. Rudd down there. Ms. Edwards,  
13 both of you?

14 Any other hands on the back row back there? Let's  
15 see, Mr. Upson, let me ask you. We haven't heard from you  
16 yet, I don't think.

17 How do you feel about that?

18 JUROR UPSON: Boycotting a product?

19 MR. GILLAM: Yes, sir, boycotting -- boycotting a  
20 product or boycotting a company because you -- you got --

21 JUROR UPSON: I've never had anything as far as --  
22 that's upset me that I would boycott a product for.

23 One that comes to mind is the NFL. The people  
24 would boycott, but that -- I've never been upset over  
25 something to boycott a certain product.



1 MR. GILLAM: All right, sir. Thank you.

2 Appreciate you.

3 Anybody ever written a letter to an editor in a  
4 newspaper?

5 Judge Gilstrap talked to you about the burden of  
6 proof in this case. Does everybody notice that the  
7 Plaintiff got to go first a few moments ago? It's going to  
8 be that way throughout the entire trial. The Plaintiff is  
9 going to go first, and we're going to go second. Do you  
10 know what that is? Anybody got any ideas of why that is?

11 Well, it's because Judge Gilstrap told you a few  
12 moments ago, the Plaintiff has the responsibility of coming  
13 forward with evidence to prove this claim of infringement.  
14 They've got the burden of coming forward and proving the  
15 damages that they seek.

16 Now, I need to ask you a question about  
17 infringement. You're going to actually have the language  
18 of this claim that's being asserted in this case. It's  
19 Claim 14 of the '177 patent. And it's going to actually  
20 have elements to -- to the claim. You'll have a juror  
21 notebook, by the way, that's going to show you this, the  
22 actual claim.

23 But a patent infringement case is kind of like the  
24 game of bingo, okay? You've got certain elements that they  
25 have to be able to prove. And if they prove them all,

1 they've got infringement. But it's like a game of bingo.  
2 If they've got B-I-N-G, and they don't prove them all,  
3 there's not infringement. Close doesn't get you there.  
4 B-I-N-G doesn't count.

5 So my question for you is this. Is there any one  
6 of you that will not hold Intellectual Ventures to the  
7 burden of proving infringement in this case?

8 Anyone on the front row?

9 Anybody on the second row?

10 Third or fourth? Anybody?

11 Is there anybody that as you're sitting here  
12 today, and I know you have not heard the evidence in this  
13 case yet, but you're thinking, you know what, if they've  
14 got most of it right, if they're pretty close, then, you  
15 know, maybe we ought to go ahead and find infringement?

16 You haven't heard the evidence, but you think, you  
17 know, they're close, maybe that's something we should do?

18 Anybody that feels that way as you start off  
19 today?

20 All right. Any of you ever been accused of doing  
21 something that you didn't do? Anybody? Everybody? Surely  
22 when you were a kid? Or maybe you did it, I don't know.

23 Anybody that's been accused of doing something  
24 they didn't do? How did it make you feel? It's that kind  
25 of question I've got for you.

1 Intellectual Ventures has the right to bring this  
2 lawsuit -- absolutely has the right to bring this case.

3 Is there anyone out there that does not believe  
4 that my client, Great West, does not have just as much  
5 right to stand up here and defend itself against a claim  
6 that it does not believe is a valid claim? Anyone that  
7 does not believe my client has just as much right to stand  
8 up here and defend itself? If so, I need to see your  
9 hands. Anybody?

10 Anyone believes that because this case has worked  
11 its way through the system and it's in -- it's now in front  
12 of a jury, that just on that fact alone, that the Plaintiff  
13 must be entitled to something here?

14 Some of you served in state court. Some of you  
15 served in municipal court. This is a federal court. It's  
16 a step up, several steps up.

17 Anyone that believes that because this case is in  
18 federal court, that the Plaintiff simply -- because of that  
19 fact alone, the Plaintiff must be entitled to something  
20 because the case has gotten through the system into federal  
21 court?

22 Anybody feel that way at all?

23 Mr. Gilliland told you that they're asking for a  
24 lot of money in this case. It's something like \$20 million  
25 or so. And we told you our case is that we don't think

1 you'll get to that question because we don't think there's  
2 infringement.

3 But because we do not infringe or because our  
4 position is we do not infringe, we don't believe the  
5 Plaintiff is entitled to anything. And if the Plaintiff  
6 does not prove infringement in this case, are you willing  
7 to award zero? Is there anybody that says, you know what,  
8 I'm just not going to do that? I'm not going to do that?

9 Anybody as we sit here?

10 All right. You saw on the video a little while  
11 ago -- and I touched on it a few moments ago -- that  
12 sometimes jurors are called upon to consider the validity  
13 of the patent, whether it should have been issued at all.  
14 And you're going to be asked to do that in this case.

15 How many of you think it's pretty hard to get a  
16 patent?

17 Okay. Juror No. 7, Mr. Hyzer, we haven't talked  
18 to you very much. What's your belief about that? What's  
19 your -- and do you have some background that --

20 JUROR HYZER: No. I think patents -- you know,  
21 watching the video, the patent has got to be something that  
22 hadn't been thought of before, a new technology. I mean,  
23 it's pretty -- you know, the technology now has advanced so  
24 much in the past few years, there's got to be something in  
25 the past that related to something that he's trying now.

1 I mean, how can you find something new?

2 MR. GILLAM: Yes, sir.

3 JUROR HYZER: It's very difficult now, you know,  
4 after all these years to come up with new ideas.

5 THE COURT: Three minutes remaining, Counsel.

6 MR. GILLAM: Because of that, Mr. Hyzer, do you  
7 believe that once a patent has been issued by the United  
8 States Patent Office, that it should not be taken away?

9 JUROR HYZER: No. It's possible that they  
10 erred --

11 MR. GILLAM: All right, sir.

12 JUROR HYZER: -- in issuing.

13 MR. GILLAM: How many of you feel like Mr. Hyzer,  
14 that it's difficult to get a patent?

15 Other hands?

16 All right. Anybody else?

17 Is there anybody -- thank you, sir.

18 Is there anybody that thinks maybe because it is  
19 difficult to get a patent, that once you got it, a juror --  
20 a jury should not have the role of taking that patent away?  
21 Is there anybody that feels that way -- feel that way?

22 Anybody?

23 That once the United States Patent Office issues a  
24 patent, you, as a jury or as a juror in a case, simply go,  
25 you know, if they've issued this patent, I cannot take that

1 away?

2 Anybody feel that way?

3 Let me close with this, similar to the question  
4 that Mr. Gilliland asked a few moments ago. You know, we  
5 try to ask all the questions we can think of to ask that  
6 might impact the decisions that we have to make, and  
7 sometimes we miss some of them.

8 But as you sit there and as you kind of listened  
9 to what they had to say and you kind of listen to what we  
10 have to say, is there anything that any of you think about  
11 that says, you know, if that lawyer would have just asked  
12 me that one question, he would have known that's  
13 something -- or he would have -- that is something that he  
14 would have wanted to know in making a decision as to  
15 whether or not I should sit as a juror in this case, for  
16 Plaintiff or for Defendant?

17 Excuse me. Anybody -- anybody think of anything?

18 As you're sitting out there, is there something,  
19 as you kind of listened to what's gone on, you think, gosh,  
20 those guys -- there's something that's kind of gnawing at  
21 me that they really ought to know about, knowing the  
22 limited amount that you know about this case? Anybody?

23 All right. Thank you so much for your time today.  
24 Look forward to working with the eight of you that are  
25 selected as jurors in this case.

1 Thank you.

2 THE COURT: Counsel, approach the bench, please.  
3 (Bench conference.)

4 THE COURT: All right. Does Plaintiff have any  
5 challenges for cause?

6 MR. GILLILAND: Yes, Your Honor. We challenge  
7 Ms. Bunt.

8 THE COURT: No. 9?

9 MR. GILLILAND: Yes, sir, No. 9. And No. 16 and  
10 No. 18.

11 THE COURT: 16 is Mr. Elliott?

12 MR. GILLILAND: Yes, sir.

13 THE COURT: All right. What after that?

14 MR. GILLILAND: No. 18.

15 THE COURT: Mr. Lewis?

16 MR. GILLILAND: And then I'm not exactly sure if  
17 it's a cause, Judge, but 17 is outside the district. So we  
18 would challenge him for cause, not being a resident of the  
19 district.

20 THE COURT: He's got a home in Longview, and  
21 I don't know where he claims his homestead. I'm a little  
22 bit leery about getting into that.

23 MR. GILLILAND: Well, and I thought he said --

24 THE COURT: I've seen clerks consider his  
25 residence address and be summonsed.

1 MR. GILLILAND: Well, I believe he said his  
2 residence is in Houston, and he has a second home here in  
3 Longview -- or in Tyler.

4 THE COURT: If he's got a home in Houston, he's  
5 got a home in Longview.

6 MR. GILLILAND: Okay. Okay.

7 THE COURT: Which one is his permanent residence?  
8 Where is he registered to vote? Where is his driver's  
9 license registered? We don't know any of that information.  
10 Do you want me to go into that with him?

11 MR. GILLILAND: I don't think we'll get to him,  
12 so...

13 THE COURT: Okay.

14 MR. GILLILAND: So we'll -- we'll not challenge  
15 him on that basis.

16 THE COURT: Okay. All right. What about  
17 Defendants? Do you have challenges for cause?

18 MR. GILLAM: We don't have any challenges for  
19 cause, Your Honor. But we do not agree with some of their  
20 challenges, obviously.

21 THE COURT: Well, we'll take those up at the  
22 bench.

23 MR. GILLAM: Certainly.

24 THE COURT: So I'm going to send the rest of the  
25 jury out for recess, except I'm going to hold back



1 Ms. Bunt. Ms. Schreck indicated, No. 15, a scheduling  
2 problem.

3 No. 16, Mr. Elliott, No. 17, and Ms. Hambrick also  
4 indicated a scheduling problem.

5 MR. GILLILAND: I believe it was No. 18. I think  
6 you said 17. I'm sorry.

7 THE COURT: I'm sorry. 18, Michael Lewis.

8 MR. BETTINGER: Yes.

9 MR. GILLILAND: And in that case, Your Honor,  
10 I think we may get to No. 17.

11 THE COURT: Tell me about what you want to do  
12 about it, Mr. Gilliland.

13 MR. GILLILAND: Well, I'd like to know where he  
14 claims his permanent residence.

15 THE COURT: I'll bring him up. We'll talk to him  
16 here at the bench.

17 Is there anybody else that I haven't identified,  
18 counsel for either party thinks I should retain and not  
19 release for recess so that we can question them here at the  
20 bench?

21 MR. BETTINGER: No, Your Honor.

22 MR. GILLAM: Not from the Defendant, Your Honor.

23 MR. GILLILAND: No.

24 THE COURT: All right. If you'll take your seats,  
25 please.

1 (Bench conference concluded.)

2 THE COURT: All right, ladies and gentlemen. I'm  
3 going to excuse most of you for recess at this time. And  
4 when you are in recess, I'm going to ask a couple of things  
5 of you.

6 First of all, when you exit the courtroom through  
7 the double doors in the back during recess, the water  
8 fountains and the restrooms are easy accessible. Take  
9 advantage of those. But do not leave the building. Do not  
10 wander around. Stay in the general area of this courtroom,  
11 if you will, please.

12 Secondly, don't discuss anything that's happened  
13 in here this morning. And let me remind all of you of  
14 something. You have heard exactly zero evidence in this  
15 case. What the lawyers tell you and what the lawyers argue  
16 to you is not evidence.

17 So I can tell you without a doubt, there's been no  
18 evidence presented. So you should not discuss anything  
19 that's happened in the courtroom this morning. Talk about  
20 your grandkids, talk about sports, talk about anything you  
21 want to talk about with each other, but don't discuss  
22 anything that's happened in here.

23 And if you'll stay in the immediate area, we will  
24 have you back here after recess as soon as possible.

25 Now, the following members of the panel, I'll

1 ask -- I'm going to ask to stay where you are and not join  
2 the rest of the panel during recess. And when the rest of  
3 the panel leaves, if you'll just step out of the way and  
4 let everyone else by you and then remain in your respective  
5 seats, please.

6 And those are No. 9, Ms. Bunt; No. 15,  
7 Ms. Schreck; No. 16, Mr. Elliott; No. 17, Mr. Turner; No.  
8 18, Mr. Lewis; and No. 22, Ms. Hambrick.

9 If those folks would stay where they are, let  
10 everyone else excuse themselves for recess, I will visit  
11 with each of you here at the bench one at a time after the  
12 remainder of the panel have exited the courtroom.

13 So with the instructions to those of you that I  
14 did not ask to stay behind not to discuss anything that's  
15 happened in here and to stay in the immediate area, those  
16 of you not identified are excused for recess at this time.

17 COURT SECURITY OFFICER: All rise for the jury  
18 panel.

19 THE COURT: Mr. Hyzer, why don't you start us out  
20 the door. Thank you.

21 (Jury panel out.)

22 THE COURT: All right. Be seated, please.

23 Counsel, approach.

24 Ms. Bunt, would you come up and join us, please?

25 (Bench conference.)

1 THE COURT: Good morning, Ms. Bunt.

2 JUROR BUNT: Good morning.

3 THE COURT: This is our microphone, and if you and  
4 I can just talk quietly here --

5 JUROR BUNT: Okay.

6 THE COURT: -- at the bench.

7 I know your husband real well. I'm sure we've met  
8 over the years. But I understand you indicated because  
9 BITCO was a company owned by the same parent that owns  
10 Great West and they are your husband's client --

11 JUROR BUNT: Yes, sir.

12 THE COURT: -- that that would affect your ability  
13 to be fair and impartial; is that correct?

14 JUROR BUNT: I think so, in this situation.

15 THE COURT: Well, that's understandable. I can  
16 tell you on behalf of both Plaintiff and Defendant, the  
17 Court also just appreciates your candor.

18 Mr. Gilliland, do you have any questions for  
19 Ms. Bunt?

20 MR. GILLILAND: No further questions, Your Honor.  
21 Thank you, Ms. Bunt.

22 THE COURT: Mr. Gillam, any questions?

23 MR. GILLAM: No, Your Honor.

24 THE COURT: Ms. Bunt, I'm going to let you join  
25 the rest of the panel outside for recess. Just don't

1 discuss anything that's happened.

2 JUROR BUNT: Yes, sir.

3 THE COURT: Thank you.

4 (Juror exits courtroom.)

5 (Bench conference continued.)

6 THE COURT: I'm going to excuse Ms. Bunt for  
7 cause.

8 (Open court.)

9 THE COURT: Ms. Schreck, would you come up,  
10 please?

11 (Bench conference continued.)

12 THE COURT: Good morning.

13 JUROR SCHRECK: Good morning.

14 THE COURT: This is our microphone. If you and  
15 I can just talk quietly here. You indicated early on that  
16 if you were selected to serve, you might have a serious  
17 problem with scheduling and being able to be here the  
18 entire time. Tell me about that.

19 JUROR SCHRECK: I already had a business trip  
20 planned for next week to go down to the Austin area, that  
21 it was in conjunction with spring break that the kids are  
22 off. And I tried to talk to her. I didn't get informed  
23 about having to go do -- I'm supposed to videotape four  
24 trucks being demoed down in the Austin area for my boss and  
25 send them back here. So they're willing to pay for my trip

1 down there now. So that's one thing. And my spouse --

2 THE COURT: That's the microphone. You'll hurt my  
3 court reporter's ears if you keep doing that.

4 JUROR SCHRECK: Sorry. And I'm also caring for my  
5 spouse that just had a major tumor removal, eight pounds.  
6 She's not going to be able to go back to work until April.  
7 And I just can't -- I don't have anybody else. I'm a wit's  
8 end.

9 THE COURT: Set aside, if you will, your  
10 work-related travel. What I hear you telling me is you've  
11 got a family issue where you're caring for a spouse, and  
12 I assume there's not anybody else that can fill that role?

13 JUROR SCHRECK: There's not. I've already lost  
14 all those.

15 THE COURT: Did you tell me you have young  
16 children in the home who will be out over spring break?

17 JUROR SCHRECK: Two.

18 THE COURT: Okay. Mr. Gilliland, do you have any  
19 questions of Ms. Schreck?

20 MR. GILLILAND: No, I don't, Your Honor.

21 THE COURT: Mr. Gillam?

22 MR. GILLAM: I do not, Your Honor.

23 THE COURT: Okay. Ms. Schreck, thank you for your  
24 candor. I'm going to let you join the rest of the panel  
25 outside. Just don't discuss what we talked about in here.

1 Thank you.

2 (Juror exists courtroom.)

3 (Bench conference continued.)

4 THE COURT: Based on her need to provide care for  
5 a family member recovering from surgery and apparently no  
6 alternative care for her children who are out of school,  
7 I'm going to exclude Ms. Schreck.

8 (Open court.)

9 THE COURT: Mr. Elliott, would you come up,  
10 please, sir?

11 (Bench conference continued.)

12 THE COURT: Good morning.

13 JUROR ELLIOTT: Good morning.

14 THE COURT: This is our microphone. If you and  
15 I can just talk quietly here.

16 During the questioning this morning, you talked  
17 about the problem you'd had with an insurance company,  
18 and --

19 JUROR ELLIOTT: Yes.

20 THE COURT: -- you said basically, as I recall,  
21 that given that experience and the severity of it, that you  
22 just didn't think both sides would start off equal in your  
23 mind in this case since one of them is an insurance  
24 company.

25 JUROR ELLIOTT: Correct.

1 THE COURT: Is that -- is that how you feel about  
2 it?

3 JUROR ELLIOTT: I've just had bad experiences.

4 THE COURT: And would those bad experiences keep  
5 you from being able to treat both the Plaintiff and the  
6 Defendant equally and fairly?

7 JUROR ELLIOTT: I don't mean to offend anybody,  
8 but being honest, I think it would.

9 THE COURT: That's why you're up here. And we all  
10 appreciate your candor. If -- if those experiences were  
11 such, and only you know the extent -- if those are such  
12 that you don't feel like you could treat both sides fairly,  
13 that's something that we need to get out in the open.

14 JUROR ELLIOTT: Yes, sir.

15 THE COURT: Mr. Gilliland, you have any questions  
16 of Mr. Elliott?

17 MR. GILLILAND: Just briefly.

18 If the Court instructs you, could you follow the  
19 Court's rules and set aside your personal feelings and  
20 follow the law and evidence in this case?

21 JUROR ELLIOTT: Sir, I just think it's corporate  
22 greed. I don't -- I don't think I could.

23 MR. GILLILAND: I don't have any more questions.  
24 Thank you, sir.

25 THE COURT: Mr. Gillam, do you have any questions?



1 MR. GILLAM: I do not, Your Honor.

2 THE COURT: Mr. Elliott, I'm going to let you join  
3 the rest of the group outside. Just don't discuss anything  
4 we've talked about in here.

5 JUROR ELLIOTT: Yes, sir.

6 THE COURT: Thank you.

7 JUROR ELLIOTT: Thank you.

8 (Juror exits courtroom.)

9 (Bench conference continued.)

10 MR. GILLAM: Your Honor, we would challenge No. 16  
11 for cause.

12 THE COURT: Well, the Plaintiff's challenged him  
13 for cause, and he's just told us he can't be fair and  
14 impartial, so I'm going to excuse him. I'm going to grant  
15 the joint challenge for cause.

16 (Open court.)

17 THE COURT: Mr. Turner, would you please join us?

18 (Bench conference continued.)

19 THE COURT: Good morning.

20 JUROR TURNER: Good morning.

21 THE COURT: Step up. This is our microphone, if  
22 you and I can just talk quietly here.

23 The reason you're up here is because we don't know  
24 if you're a resident of this district or if you're a  
25 resident of the Southern District down in Houston. We know

1 you have two houses. You told us you live in Houston.

2 The question is, are you a qualified citizen to  
3 serve on this jury in this district, or are you a resident  
4 and have your permanent home someplace else? I don't know  
5 where you -- your driver's license says you live and your  
6 tax return says and all these things. Tell us -- tell us  
7 about your situation.

8 JUROR TURNER: I have a home in Longview. I work  
9 and live in another home in Houston. I've been there  
10 probably 15, 20 years.

11 THE COURT: Where are you registered to vote, what  
12 address?

13 JUROR TURNER: Gregg County.

14 THE COURT: Because jurors are selected in this  
15 district at the present through voter registration.

16 JUROR TURNER: Correct.

17 THE COURT: So even though you have another home,  
18 you still haven't changed your voter registration?

19 JUROR TURNER: Right.

20 THE COURT: And on your driver's license, what --

21 JUROR TURNER: It's this home here --

22 THE COURT: It says Longview?

23 JUROR TURNER: -- Longview home.

24 THE COURT: Mr. Gilliland, do you have any  
25 questions?

1 MR. GILLILAND: The only thing I would ask is do  
2 you consider yourself -- do you consider your Houston home  
3 to be your permanent residence or your Gregg County home?

4 JUROR TURNER: I spend 95 percent of my time in  
5 Houston. I come to this house probably six times a year,  
6 six weekends -- six weeks maybe out of a year.

7 MR. GILLILAND: And would serving on a jury up  
8 here be a major inconvenience for you?

9 JUROR TURNER: It's --

10 THE COURT: Understand that all jury service is an  
11 inconvenience.

12 JUROR TURNER: Right. It's the same as -- I mean,  
13 work is there, and I'm here. It's the same as having a job  
14 here. I still wouldn't be at work.

15 THE COURT: You're not asking me to excuse you  
16 because of your residence or your work in Houston, are you?

17 JUROR TURNER: My position -- I travel quite a  
18 bit. I'll have to make some arrangements to cancel my  
19 travels.

20 THE COURT: And I assume that would happen if you  
21 were called for jury duty in Houston, too?

22 JUROR TURNER: That is for Houston. I'm supposed  
23 to go to Cairo on Monday, but I will have to call and  
24 cancel that.

25 THE COURT: Okay. Is there anything else that you

1 think I should know about your ability to serve as a juror  
2 here?

3 JUROR TURNER: I think we're good.

4 THE COURT: Mr. Gillam, do you have any questions?

5 MR. GILLAM: I do not, Your Honor.

6 THE COURT: Mr. Turner, I'm going to let you join  
7 the rest of the group outside. Just don't discuss what  
8 we've talked about in here.

9 JUROR TURNER: Thank you.

10 (Juror exits courtroom.)

11 (Bench conference continued.)

12 THE COURT: Mr. Gilliland, do you -- do you  
13 challenge Mr. Turner as unqualified to serve in this case?  
14 I mean, he has not given us any indication that he can't be  
15 fair and impartial.

16 MR. GILLILAND: No.

17 THE COURT: The only issue that is -- is whether  
18 he is a proper member of the venire panel here because  
19 facts related to the two homes that he owns and where his  
20 place of business is.

21 MR. GILLILAND: Yeah, I would -- I would challenge  
22 him on the basis of him not being a resident in the  
23 district since he said his home has been in Houston for the  
24 last 15 or 20 years. He just hasn't changed his voter  
25 registration for some reason. So the --

1 THE COURT: Or his driver's license.

2 MR. GILLILAND: Or his driver's license, correct.  
3 So we would challenge him on that basis.

4 THE COURT: All right. I'll carry -- quite  
5 honestly, I want the benefit of checking with the county --  
6 excuse me, with the district clerk about this. I'm going  
7 to carry this challenge. And I'll let you know what I've  
8 determined is appropriate here before you strike your list.  
9 I'll bring up Mr. Lewis next.

10 (Open court.)

11 THE COURT: Mr. Lewis, would you come up, please,  
12 sir?

13 (Bench conference continued.)

14 THE COURT: Good morning, sir.

15 JUROR LEWIS: Good morning.

16 THE COURT: This is our microphone, if you and  
17 I can just talk quietly.

18 JUROR LEWIS: Okay.

19 THE COURT: There were questions about the  
20 Plaintiff planned to ask this jury for something on the  
21 order of \$20 million. And like other members on the jury  
22 panel, you said that's an awful lot of money.  
23 Understanding that you haven't heard any evidence in this  
24 case --

25 JUROR LEWIS: Correct.

1           THE COURT:  -- if you heard all the evidence and  
2 if the evidence otherwise might support an award of that  
3 size, could you return such a verdict, or is it just an  
4 amount of money that's so large, you couldn't return a  
5 verdict no matter what the evidence was?

6           JUROR LEWIS:  It would be within the context  
7 of what we hear in here.  You know, I mean, it's just  
8 an exorbitant amount of money, but if it's -- if that's  
9 it, that's it.

10          THE COURT:  So it could be justified through the  
11 evidence?

12          JUROR LEWIS:  Yes, correct.

13          THE COURT:  Okay.

14          JUROR LEWIS:  Yes, sir.

15          THE COURT:  Mr. Gilliland, do you have questions  
16 for Mr. Lewis?

17          MR. GILLILAND:  If the evidence supports a  
18 verdict -- or a damage award of \$20 million, will you be  
19 able to do that if that's what the evidence supports or  
20 shows?

21          JUROR LEWIS:  Yeah.  Within the context, if  
22 it's -- if the evidence supported that, I'd be able to do  
23 that,  
24 I believe.

25          THE COURT:  Mr. Gillam, do you have any questions?

1 MR. GILLAM: I do not, Your Honor.

2 THE COURT: Okay. All right. Mr. Lewis, thank  
3 you.

4 JUROR LEWIS: Sure.

5 THE COURT: I'm going to let you join the rest of  
6 the group outside. Just don't discuss what we've talked  
7 about in here.

8 JUROR LEWIS: Okay. Very good.

9 (Juror Lewis leaves the courtroom.)

10 THE COURT: I'm not going to excuse Mr. Lewis.  
11 I'll deny the challenge for cause by Plaintiff.

12 (Open court.)

13 THE COURT: Ms. Hambrick, will you come up,  
14 please?

15 (Bench conference continued.)

16 THE COURT: Good morning, ma'am.

17 JUROR HAMBRICK: Good morning.

18 THE COURT: This is our microphone. I'm just  
19 going to talk with you quietly up here.

20 When we started today, I asked for people who  
21 might have a serious problem being able to be here the  
22 entire time of the trial if they were selected, and you  
23 raised your hand. Tell me about that.

24 JUROR HAMBRICK: Well, I purchased some tickets  
25 back in January to go out of town, and it was going to

1 leave this coming Thursday, the 14th. And being that I got  
2 the notice --

3 THE COURT: Are these airline tickets?

4 JUROR HAMBRICK: No. They're tickets to go to a  
5 play that's out of town.

6 THE COURT: Okay.

7 JUROR HAMBRICK: And the play starts at 7:00  
8 o'clock, and it's in Dallas. And so I was thinking, well,  
9 after it got pushed back to the 8th, that I would probably  
10 be done. I didn't try to get it deferred or anything so --  
11 thinking it would be done and over with by then, but since  
12 you're telling me it's going to be going to the 13th -- I  
13 mean, to the 14th, which is next Thursday, so --

14 THE COURT: Well, none of us know exactly.

15 JUROR HAMBRICK: Right.

16 THE COURT: And once the jury has heard all the  
17 evidence and I've given them my instructions and counsel's  
18 presented their final arguments, it's going to be up to the  
19 jury as to how long it takes them to make a decision.

20 JUROR HAMBRICK: Yes, sir.

21 THE COURT: We could get a decision in 30 minutes,  
22 and we might be 10 hours waiting and still not have a  
23 decision.

24 JUROR HAMBRICK: Right.

25 THE COURT: So that's just something that there's



1 no way to know when the process would be ultimately  
2 complete.

3 JUROR HAMBRICK: Right. Yes, sir.

4 THE COURT: So let me understand this: The  
5 tickets are to a play in Dallas.

6 JUROR HAMBRICK: Uh-huh.

7 THE COURT: And the play starts at 7:00 o'clock in  
8 the evening --

9 JUROR HAMBRICK: Yes.

10 THE COURT: -- on Thursday of next week?

11 JUROR HAMBRICK: Uh-huh.

12 THE COURT: Now, are these -- are these tickets  
13 that could be rescheduled? Is it a one-time performance?  
14 Are they going to be performing whatever it is for the next  
15 month, and you could reschedule it? Tell me about that.

16 JUROR HAMBRICK: It's a one-time performance.

17 THE COURT: Okay.

18 JUROR HAMBRICK: And --

19 THE COURT: Were they expensive tickets?

20 JUROR HAMBRICK: (Laughing.)

21 THE COURT: I take that as a yes?

22 JUROR HAMBRICK: Yes.

23 THE COURT: Okay. All right. Mr. Gilliland, do  
24 you have any questions?

25 MR. GILLILAND: I don't.

1 THE COURT: Mr. Gillam?

2 MR. GILLAM: No, sir.

3 THE COURT: Ms. Hambrick, thank you for your  
4 candor. I'm going to let you join the rest of the group  
5 outside. Just don't discuss what we talked about in here.

6 JUROR HAMBRICK: Okay. Thank you so much.

7 (Juror Hambrick leaves the courtroom.)

8 MR. GILLAM: I don't think you're going to get to  
9 her anyway.

10 THE COURT: I'm going to excuse her.

11 MR. GILLAM: Who is it to?

12 MR. GILLILAND: 22.

13 MR. GILLAM: No. What's she going to see?

14 MR. GILLILAND: A play. She never said exactly  
15 why.

16 THE COURT: Just a minute, guys. I've excused  
17 No. 9 for cause. I've excused No. 15 for scheduling  
18 issues. I've excused No. 16 for cause. I have not excused  
19 No. 18. And I've excused No. 22. The only one still  
20 unresolved is No. 17.

21 There's no reason he can't serve, and there's no  
22 indication he can't be fair and impartial. And I'm not  
23 sure we can determine with any absolute certainty as we  
24 stand here at the bench today, but I don't want to keep  
25 somebody on the panel that there's an issue with from

1 Plaintiff.

2 If Plaintiff is going to maintain their challenge  
3 against Mr. Turner, I'm going to need about 15 or 20  
4 minutes before I can tell you whether I'm going to excuse  
5 him or not, and only then are you going to be able to  
6 strike your list.

7 MR. GILLAM: Right.

8 THE COURT: Mr. Gilliland, you want to maintain  
9 your challenge on 17?

10 MR. GILLILAND: Yes, Your Honor, I think we do.

11 THE COURT: All right. Well, it's a quarter after  
12 11:00, counsel. Take 15 minutes, and then I'll see you  
13 back here in 15 minutes, and I'll give you an answer on  
14 No. 17.

15 MR. GILLAM: Yes, Your Honor.

16 MR. GILLILAND: Thank you, Your Honor.

17 (Bench conference concluded.)

18 THE COURT: The Court will stand in recess until  
19 11:15.

20 COURT SECURITY OFFICER: All rise.

21 (Recess.)

22 COURT SECURITY OFFICER: All rise.

23 THE COURT: Be seated, please.

24 Where's Plaintiff's counsel? I said we would  
25 recess until 11:30. Any idea?

1           Let me ask the Court Security Officer to see if he  
2           can find Plaintiff's counsel and get them in the courtroom.

3           COURT SECURITY OFFICER: There's one already  
4           headed that way, sir.

5           THE COURT: Okay. Thank you.

6           And also, I need you to find Mr. Turner,  
7           Panel Member No. 17, and ask him to return to the  
8           courtroom.

9           COURT SECURITY OFFICER: Yes, sir.

10          THE COURT: Just No. 17.

11          Don't make me wait on you again, Mr. Gilliland.

12          MR. GILLILAND: Understood, Your Honor. My  
13          apologies.

14          THE COURT: I said 11:30.

15          Mr. Turner, you've indicated to the Court that you  
16          have a home in Houston where you've lived approximately the  
17          last 15 years and that you spend about 95 percent of your  
18          time at that address; is that correct?

19          JUROR TURNER: That's correct.

20          THE COURT: Let's get -- let's get him a handheld  
21          microphone, please.

22          JUROR TURNER: That's correct.

23          THE COURT: All right. You also indicated to me  
24          at the bench that you were registered to vote in Gregg  
25          County where you have a second home?

1 JUROR TURNER: That's correct also.

2 THE COURT: And you also indicated to me that your  
3 driver's license address shows your home address or the  
4 address of your second home in Gregg County; is that  
5 correct?

6 JUROR TURNER: That's correct.

7 THE COURT: Can you tell me why in 15 years in  
8 Houston you haven't reregistered to vote or changed your  
9 driver's license?

10 JUROR TURNER: I just never have. I have also  
11 kept this home in Longview.

12 THE COURT: Have you -- have you voted in the last  
13 15 years?

14 JUROR TURNER: I have.

15 THE COURT: So you come to Longview to vote?

16 JUROR TURNER: I do.

17 THE COURT: Well, to be a qualified juror in this  
18 district, you must be a resident of this district, and  
19 residence is a combination of several things, including  
20 your intent.

21 And I did not ask you point blank, but from the  
22 answers to the questions you gave me, my assumption is that  
23 all other things being equal, you would tell me that you  
24 intend your home to be at your address in Houston; is that  
25 correct?

1 JUROR TURNER: If I spend that much time there,  
2 yes.

3 THE COURT: If you were equally between Longview  
4 and Houston and had nothing else to do and someone said go  
5 home, would you go north or would you go south?

6 JUROR TURNER: I would definitely go to the city.

7 THE COURT: I take that to mean Houston?

8 JUROR TURNER: Houston.

9 THE COURT: Okay. Then I'm going to find that  
10 you're not qualified to serve as a juror in this district.

11 I would suggest to you strongly that you  
12 reregister to vote in Houston at your address there because  
13 you might well get summoned for jury duty in this district  
14 again. And while I detect no malice, you have certainly  
15 caused a headache for the Court this morning.

16 JUROR TURNER: My apologies to all of you.

17 THE COURT: All right. That -- that clarifies --  
18 that clarifies what I needed to clarify, Mr. Turner.  
19 You're not going to serve on this jury because you're not  
20 qualified to serve on this jury.

21 JUROR TURNER: Okay.

22 THE COURT: But I'm going to ask you to return to  
23 the rest of the panel that's on recess that's outside the  
24 courtroom and not to discuss anything about this matter or  
25 anything that's happened in the courtroom this morning.

1 JUROR TURNER: Very well.

2 (Juror Turner leaves the courtroom.)

3 THE COURT: All right. Counsel, I'm going to give  
4 you until a quarter until 12:00 to strike your list. I'm  
5 excusing Mr. Turner, No. 17. I've already advised you as  
6 to the other issues. By my calculations, that means you  
7 should probably strike through Panel Member No. 20.

8 Have your strike list back to Ms. Lockhart, the  
9 courtroom deputy, in the next 15 minutes. The Court stands  
10 in recess.

11 (Bench conference concluded.)

12 COURT SECURITY OFFICER: All rise.

13 (Recess.)

14 (Jury in.)

15 COURT SECURITY OFFICER: All rise.

16 THE COURT: Be seated, please.

17 All right, ladies and gentlemen. If you will  
18 listen carefully when your name is called, if you'll come  
19 forward and take your seat in the jury box. I'm going to  
20 seat eight jurors in this case, and I'd like to have the  
21 first four centered in the front -- or on the front row of  
22 the jury box and the second four behind then centered on  
23 the second row of the jury box.

24 And if the jury person called for the jury will  
25 come in the jury box on that far end, walk down, and leave

1 two seats vacant, stand in front of the third seat from the  
2 end, then juror two, three, and four, we'll stack up behind  
3 them, and then jurors five, six, seven, and eight can come  
4 on the second row and stand directly behind those jurors on  
5 the front row, and that will center our eight jurors with  
6 four on the front row and four on the second row.

7           So it all depends on whoever gets called first,  
8 and if he or she will stand in front of the third chair,  
9 leaving two vacant chairs from the end on this first row,  
10 that should allow everybody to orient from there and center  
11 our jury in the box.

12           So with that, Ms. Lockhart, will you call the  
13 names of our panel members selected to serve as jurors in  
14 this case.

15           COURTROOM DEPUTY: Yes, sir.

16           Nicole Edwards, Gary Robinson, Teresa Whitaker,  
17 Karl Hyzer, Matthew Upson, Danny Johnson, Emily Cremers,  
18 and Terry Harper.

19           THE COURT: All right. Please be seated.

20           Those of you not selected to serve on this jury,  
21 I'm about to excuse you at this time, but I want to excuse  
22 you with the thanks and appreciation of the Court, the  
23 Court staff, and, ladies and gentlemen, I can tell you the  
24 lawyers and the parties in this case on both sides  
25 appreciate your service here this morning as well.



1           Even though you were not selected to serve on this  
2 jury, every one of you has done a very real and important  
3 public service by interrupting your daily lives, being  
4 here, presenting yourself for jury duty. Every one of you  
5 had other places to be this morning, other things to do  
6 that were important in your lives. You set those aside,  
7 and you made a sacrifice to come and present yourself for  
8 jury duty.

9           And even though you weren't selected, you have  
10 facilitated the process that otherwise the Court would not  
11 have been able to carry out. And you have done very real  
12 and important public service that the Court recognizes and  
13 thanks you for.

14           Ladies and gentlemen, the Court is dependent upon  
15 good lay citizens who will present themselves when  
16 summonsed for jury duty like you have been this morning,  
17 and  
18 I appreciate what you've done very much.

19           The clerk's office and Ms. Green in the clerk's  
20 office who you've worked with will be glad to assist you  
21 with regard to any documentation you might need for an  
22 employer who wants to know why you didn't show up at work  
23 this morning, or anything else that can be helpful to you,  
24 the clerk's office will be more than happy to work with  
25 you.

1           I can guarantee they're going to want to recover  
2 those very expensive plastic numbers and little round  
3 badges that you're wearing. Unfortunately, you don't get  
4 to keep those as a souvenir.

5           If you have any questions about your service as  
6 members of this venire panel, the clerk's office will be  
7 happy to help you and work with you. Again, ladies and  
8 gentlemen, even though you weren't selected, thank you so  
9 much for being here, for making the sacrifice, and for  
10 being good citizens and serving your country by presenting  
11 yourself this morning.

12           With that, those on the panel not selected to  
13 serve on the jury are now excused.

14           (Remaining jury panel out.)

15           THE COURT: All right. Please be seated.

16           At this time, I'm going to ask the eight members  
17 of our jury to stand and be sworn by the courtroom deputy.

18           Please stand, ladies and gentlemen.

19           (Jurors sworn.)

20           THE COURT: Please be seated.

21           Ladies and gentlemen, before we break for lunch,  
22 I have a couple of important instructions I need to give  
23 you. If you will give me your attention, I'll proceed to  
24 give you these instructions, and then we will break for  
25 lunch.

1 I do need to let you know, as a matter of  
2 housekeeping, the Court has signed an order indicating that  
3 it's important that you remain in the courtroom during --  
4 or the courthouse during lunch each day.

5 That means the government will buy you lunch and  
6 bring it to you in the jury room every day, and you're not  
7 going to have to leave the building and search around  
8 somewhere in downtown Tyler to have lunch and then get  
9 back.

10 That will also allow the Court to take a less  
11 lengthy lunch break, and it should help us get more  
12 evidence in each day.

13 So as we go forward, plan on having lunch provided  
14 each day during your service as jurors in this case.

15 Now, at this point, I need to give you these  
16 additional instructions regarding your service as jurors.  
17 Do not discuss this case with anyone. That's absolutely an  
18 essential instruction.

19 As a matter of fact, ladies and gentlemen, my  
20 practice is to remind you of that just about every time you  
21 get up out of those chairs to leave the jury box.

22 And let me tell you why. It is absolutely  
23 essential that at the end of the trial, when you've heard  
24 all the evidence which has come in through what's been  
25 presented in this courtroom and when you are asked to

1 answer questions that the Court's going to give you in  
2 writing, it's essential that the only information you have  
3 to draw upon to answer those questions will be the  
4 testimony that you've heard from this witness stand under  
5 oath and subject to cross-examination, any sworn testimony  
6 presented to you by video deposition, and the exhibits  
7 which the Court has examined and found to be admissible  
8 under the rules of evidence and has admitted as exhibits in  
9 the trial. That is the entire universe of evidence that  
10 you should consider when you retire to deliberate on your  
11 verdict.

12           Therefore, it is absolutely essential that you not  
13 communicate or discuss this case with anyone in any way.  
14 Otherwise, you will be opening yourselves to additional  
15 information that is improper and would taint the entire  
16 process.

17           One reason I give this instruction repeatedly is  
18 because if in any case it's violated, in all likelihood, we  
19 will have to start completely over with a new jury, and all  
20 the time, money, and effort that has been put into this  
21 trial will be wasted.

22           So when you get home tonight, unless you live  
23 alone, whoever is there to meet you, the first question  
24 you're going to get, and I promise you this is going to  
25 happen, they're going to say, tell me what happened in

1 federal court in Tyler today. Don't even try to answer  
2 that question, because if you even try to answer it, you'll  
3 almost assuredly violate my instruction to you.

4 Just tell whoever it is that asks that question,  
5 that very firm federal judge told you in no uncertain terms  
6 not to talk about the case with anyone. And when the case  
7 is over and when you've been released, you'll be free to  
8 discuss it with them, but until then, you cannot and must  
9 not discuss this case with anyone.

10 And when I say don't discuss the case, ladies and  
11 gentlemen, I mean don't communicate about it in the  
12 broadest possible sense. Don't send an email. Don't text.  
13 Don't get on any form of social media and post or tweet or  
14 whatever else people do on social media. Don't communicate  
15 whatsoever in any way about this case with anyone.

16 And also, ladies and gentlemen, just so I can be  
17 completely clear, that instruction applies to the eight of  
18 you when you're together.

19 You are not to discuss this case among the eight  
20 of you until such time as all the evidence has been  
21 presented, I have given you my final instructions on the  
22 law to apply, and counsel for the parties have presented  
23 their closing arguments to you.

24 At that point, I will direct you to retire to the  
25 jury room and to consider and deliberate on your verdict.

1 At that moment in time, you are permitted to discuss the  
2 case among each other.

3 As a matter of fact, ladies and gentlemen, at that  
4 moment in time, it becomes your duty to discuss the case  
5 among the eight of you in an effort to reach a unanimous  
6 verdict in this case. But until that time, you must not  
7 communicate with each other in any way about the case.

8 So throughout this trial, when you're on recess,  
9 when you're gathered in the jury room for lunch or in the  
10 morning before we start, talk about anything you want to  
11 talk about, but do not discuss anything that's happened  
12 over the course of the trial.

13 In that same vein, ladies and gentlemen, you're  
14 not to do any research about anything related to this case.  
15 You are not to go home and get on your computer and do a  
16 Google search of Plaintiff or Defendant or this lawyer or  
17 that lawyer or this witness that you heard. You are not to  
18 do any research of any kind in any way.

19 That includes the old-fashioned kind at the  
20 library where you pull an encyclopedia off the shelf. Do  
21 not do any research of any kind.

22 And in that regard, ladies and gentlemen, all of  
23 us pretty much -- all of us these days carry a smartphone  
24 with us. And while it's a very good telephone, it's also a  
25 mini computer that's available at any time to do searches

1 on the Internet with.

2 I'm going to ask you when we come back from lunch  
3 today, if you have a smartphone that you have with you  
4 today, leave it in the jury room. And when you come back  
5 tomorrow, I'm going to ask you either to leave that  
6 smartphone at home or leave it in your vehicle. If you're  
7 in a position where regarding your business or some  
8 important family matter, you need to check for a text  
9 message or an email, you'll have an opportunity over the  
10 lunch break or during other recesses, if it's important, to  
11 go to your vehicle and check your phone.

12 But I don't want any of you tempted when you're  
13 hearing new things and new concepts to pull out your  
14 smartphone and open a browser and do any research while  
15 you're in the jury room. That is just as improper as  
16 everything else I've talked to you about.

17 So don't communicate about the case in any way  
18 with any person, including the eight of yourselves. Don't  
19 do any research whatsoever about anything involved in this  
20 case.

21 Also, ladies and gentlemen, I don't think this is  
22 likely, but I can't tell you that it's not possible, so  
23 I need to visit with you about it, and that's this.

24 This is an important case. There is a lot at  
25 stake. These are important issues. And while I don't

1 think it's likely, it is possible, given the importance and  
2 the scope of this case and what's at stake, that some third  
3 party might, during this trial, attempt to approach you and  
4 influence your decision about how you will decide the facts  
5 in this case. That could happen. I can't tell you that it  
6 won't. I don't think it will happen, but it's within the  
7 realm of possibility.

8           If at any time before I have discharged you from  
9 your duty as jurors in this case, anybody approaches you in  
10 any way that you feel uncomfortable about or uneasy about  
11 related to your service as jurors, then you should  
12 immediately notify Ms. Green in the clerk's office. She  
13 will let me know, and I will deal with it.

14           I don't think it's likely. But, again, this is  
15 not an unimportant case, and there's a lot at stake for  
16 both the Plaintiff and the Defendant, and it is within the  
17 realm of possibility that that might happen. I just want  
18 to make you aware of that.

19           One other thing, ladies and gentlemen, and then  
20 I'll let you break for lunch, and that is this. Over the  
21 course of this trial, there are going to be unavoidable  
22 times when you are coming and going from the courthouse,  
23 perhaps over a break or a recess, certainly in the mornings  
24 and in the evenings when you're going to unavoidably, in  
25 the hallway, in the restrooms, on the elevator, you're



1 going to be in close contact with one or more of these  
2 lawyers, one or more of the witnesses, one or more of the  
3 corporate representatives.

4 I want you to understand this. When that happens,  
5 they're not going to speak to you. If you should walk in  
6 right next to one of these lawyers first thing in the  
7 morning, they're not going to say, good morning, how are  
8 you today, I hope you have a good day. They're not going  
9 to be the friendly and outgoing and gregarious kind of  
10 people that we're used to in East Texas.

11 Again, it goes back to the same fundamental  
12 principle that you should have absolutely nothing to  
13 consider or take into account when you answer the questions  
14 in this verdict other than what came in as sworn testimony  
15 during the trial from the witnesses and the exhibits that  
16 the Court has admitted into evidence.

17 So when one of those people just walks right by  
18 you or just stares at the wall and doesn't speak, don't  
19 take that as being rude. Don't take that as being  
20 unfriendly. Don't hold that against them. Understand  
21 simply that they are doing what the Court requires of them.

22 All right. Ladies and gentlemen, I'm told by the  
23 clerk's office that your lunch is available for you in the  
24 jury room.

25 I'm going to excuse you with these instructions

1 for lunch.

2 It is about seven or eight minutes after 12:00.  
3 We will attempt to reconvene at 1:00 o'clock. At that  
4 time, I will give you my preliminary instructions, and the  
5 lawyers for both of the parties will present their opening  
6 statements.

7 After the opening statements are presented, then  
8 we'll proceed with the Plaintiff's case, and they'll call  
9 their first witness.

10 Follow all the instructions I've given you, ladies  
11 and gentlemen, of course, including not to discuss the case  
12 among yourselves.

13 With that, the jury is excused for lunch at this  
14 time.

15 COURT SECURITY OFFICER: All rise for the jury.

16 (Jury out.)

17 THE COURT: All right. Counsel, be seated,  
18 please.

19 All right. Is there anything from either  
20 Plaintiff or Defendant that needs to be raised with the  
21 Court before we recess for lunch?

22 MR. GILLILAND: Nothing from the Plaintiff, Your  
23 Honor.

24 MR. GILLAM: Not from the Defendant, Your Honor.

25 THE COURT: We stand in recess until 1:00 o'clock.

1 COURT SECURITY OFFICER: All rise.

2 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes  
SHELLY HOLMES, CSR, TCRR  
OFFICIAL REPORTER  
State of Texas No.: 7804  
Expiration Date: 12/31/20

3/8/19  
Date